FEDERAL REGISTER

Vol. 85 Tuesday,
No. 62 March 31, 2020

Pages 17721–18104

OFFICE OF THE FEDERAL REGISTER

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Tuesday, March 31, 2020

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1779

Rural Housing Service

7 CFR Part 3575

Rural Business-Cooperative Service

7 CFR Part 4287

Notification of Guarantee Loan Payment Deferrals for Business and Industry Loan Guarantees, Rural Energy for America Program Loan Guarantees, Community Facilities Loan Guarantees, and Water and Waste Loan Guarantees

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Notification.

SUMMARY: The Rural-Business Cooperative Service (RBCS), Rural Housing Service (RHS), and Rural Utilities Service (RUS) agencies of the Rural Development mission area, hereinafter referred to as Agency, will temporarily allow lenders with guaranteed loans with the Agency to unilaterally offer payment deferrals for the period specified in the **DATES** section of this notification to their customers who may be experiencing temporary cash flow issues due to the Coronavirus (COVID–19) pandemic.

DATES: This policy is effective March 31, 2020 and the temporary authorization expires on September 30, 2020.

FOR FURTHER INFORMATION CONTACT: For RBCS, Aaron Morris, Director, Program Processing Division, 202–720–1501, *Aaron.Morris@usda.gov;* for RHS, Deborah Jackson, Director, Guaranteed Loan Processing and Servicing Division, 202–720–8454, *Deborah.Jackson2@usda.gov;* for RUS, James Fritz, Water and Environmental Programs, 413–253–4303, *James.Fritz2@usda.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 7 CFR 4287.107 (RBCS), 7 CFR 3575.69 (RHS), and 7 CFR 1779.69 (RUS), the lender is responsible for servicing the entire loan and for taking all servicing actions that a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. Beginning immediately and through September 30, 2020, the USDA Business and Industry Guaranteed Loan Program (B&I), Rural Energy for America Program (REAP), Community Facilities Guaranteed Loan Program, and Water and Waste Guaranteed Program lenders may assist borrowers experiencing temporary cash flow issues resulting from the COVID–19 pandemic, by deferring payments for a period no longer than 180 days from the date the original payment is due. The lender must notify the Agency in writing of any payment deferments. Written notification to the Agency will meet the standard for concurrence until September 30, 2020. After September 30, 2020, lenders must resume obtaining Agency approval in accordance with all applicable program regulations, forms, and existing authorities. A response from the Agency is not required. This guidance applies to all borrowers that had a current repayment status as of January 31, 2020.

If the loan has been sold on the secondary market, the secondary market holder and lender must agree to the deferment actions being taken. The Agency will expect a written agreement signed by both parties in these instances prior to executing any payment deferral action.

The Agency does not consider a loan that is under a deferral or forbearance agreement to be a delinquent loan. Unpaid interest accruing during a deferral or forbearance agreement is not subject to the limitation of the guarantee of accrued interest under 7 CFR 4287.145(d) (RBCS), 7 CFR 3575.3 (RHS), nor 7 CFR 1779.3 (RUS).

Bette B. Brand,

Deputy Under Secretary Rural Development.

[FR Doc. 2020–06706 Filed 3–27–20; 11:15 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2018–0030; RIN 1557–AE44]

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1629; RIN 7100–AF22]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AF43

Standardized Approach for Calculating the Exposure Amount of Derivative Contracts

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

ACTION: Notification.

SUMMARY: In light of recent economic disruptions caused by the COVID–19 virus and recent volatility in U.S. financial markets, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are issuing a document to allow depository institutions and depository institution holding companies to implement the final rule titled Standardized Approach for Calculating the Exposure Amount of Derivative Contracts (SA–CCR rule) for the first quarter of 2020, on a best efforts basis.

DATES: Effective March 31, 2020.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Director, or Guowei Zhang, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Carl Kaminski, Special Counsel, Kevin Korzeniewski, Counsel, Daniel Perez, Senior Attorney, Chief Counsel's Office, (202) 649–5490; the Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239;

Teresa A. Scott, Manager, (202) 475–6316; Eusebius Luk, Senior Financial Institution Policy Analyst I, (202) 452–2874; Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; Mark Buresh, Senior Counsel, (202) 452–5270; Jonah Kind, Senior Attorney, (202) 452–2045; Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf, (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Irina Leonova, Acting Chief, Capital Strategies Section, *ileonova@fdic.gov;* Peter Yen, Senior Policy Analyst, *pyen@fdic.gov,* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, *mphillips@fdic.gov;* Catherine Wood, Counsel, *cawood@fdic.gov;* Supervision Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) recently adopted the final rule titled Standardized Approach for Calculating the Exposure Amount of Derivative Contracts (SA–CCR rule).[1] The SA–CCR rule implements a new approach—the standardized approach for counterparty credit risk (SA–CCR methodology)—for calculating the exposure amount of derivative contracts under the agencies' regulatory capital rule (capital rule). The SA–CCR rule also revises other aspects of the capital rule related to total leverage exposure (the denominator of the supplementary leverage ratio) and the cleared transactions framework.

The agencies are permitting a banking organization the flexibility to implement the SA–CCR rule, including the SA–CCR methodology and the other amendments described in the SA–CCR rule, one quarter early and on a best efforts basis if the banking organization chooses to do so.[2]

Recent events have suddenly and significantly impacted financial markets. The spread of the COVID–19 virus has disrupted economic activity in many countries. In addition, financial markets have experienced significant volatility. The magnitude and persistence of the overall effects on the economy remain highly uncertain. The notification should help to mitigate the impact of recent dislocations in the U.S. economy as a result of COVID–19. By allowing early adoption of the SA–CCR rule, the notification allows banking organizations to implement the SA–CCR methodology's more risk-sensitive measurement of the exposure amounts of derivative contracts one quarter earlier than the SA–CCR rule provided. For purposes of any early adoption of the SA–CCR rule, the agencies understand that banking organizations are in the process of refining their systems to implement the SA–CCR rule and, therefore, for purposes of the first quarter, early adoption would be on a best efforts basis.

The SA–CCR rule was issued with an effective date of April 1, 2020. The SA–CCR rule provides banking organizations the option to adopt the SA–CCR methodology for derivative contracts beginning on April 1, 2020. For advanced approaches banking organizations, adoption of the SA–CCR methodology is mandatory beginning January 1, 2022. As a result, by no later than January 1, 2022, advanced approaches banking organizations must use the SA–CCR methodology for purposes of standardized total risk-weighted assets and the supplementary leverage ratio, and must use either the SA–CCR methodology or the internal models methodology for purposes of advanced approaches total risk-weighted assets. The SA–CCR rule provides non-advanced approaches banking organization the option to adopt the SA–CCR methodology for purposes of standardized total risk-weighted assets and, if applicable, the supplementary leverage ratio, beginning April 1, 2020. As a result, banking organizations could adopt the SA–CCR methodology as early as April 1, 2020, and advanced approaches banking organizations are required to adopt the SA–CCR methodology beginning January 1, 2022.

The SA–CCR rule also included several other amendments to the capital rule that are effective as of April 1, 2020. These amendments include, among others: (1) A 2 percent or a 4 percent risk-weight for cash collateral posted to a qualifying central counterparty (QCCP) subject to certain requirements; (2) the ability of a clearing member banking organization to recognize client collateral posted to a central counterparty (CCP) under certain circumstances; (3) a zero percent risk-weight for the CCP-facing portion of a transaction where a clearing member banking organization does not guarantee the performance of the CCP to the clearing member's client; and (4) the ability of a clearing member banking organization to apply a 5-day holding period for collateral associated with client-facing derivatives for purposes of the collateral haircut approach.

The agencies are allowing banking organizations to implement the SA–CCR rule, including the SA–CCR methodology and the other amendments, on a best efforts basis immediately. A banking organization that elects to adopt the SA–CCR methodology must adopt the SA–CCR methodology for all derivative contracts; it cannot implement the SA–CCR methodology for a subset of its derivative contracts. However, a banking organization may adopt some of the other amendments described in the SA–CCR rule regardless of whether it chooses to early adopt the SA–CCR methodology.[3]

The agencies expect to make related amendments to the Call Report, FFIEC 101, and FR Y–9C, as applicable, filed as of March 31, 2020, to reflect this notification. These amendments will be addressed in a separate **Federal Register** document. Adopting the SA–CCR rule on a best efforts basis for the first quarter of 2020 is optional for all banking organizations subject to the capital rule. The SA–CCR rule effective date will remain April 1, 2020, and the mandatory compliance date will remain January 1, 2022.

Morris R. Morgan,

First Deputy Comptroller, Office of the Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about March 26, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–06755 Filed 3–30–20; 8:45 am]

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[1] *See* 85 FR 4362 (January 24, 2020).

[2] The SA–CCR rule had an original effective date of April 1, 2020, the first day of the calendar quarter following publication in the **Federal Register**, pursuant to 12 U.S.C. 4802(b)(1). Banking organizations may elect to comply before the effective date pursuant to 12 U.S.C. 4802(b)(2).

[3] Certain of the other amendments, such as the ability of a banking organization to use SA–CCR for the calculation of exposure under the OCC's lending limits rule, are dependent on the banking organization adopting the SA–CCR methodology.

DEPARTMENT OF TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2020–0010]

RIN 1557–AE82

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q; Docket No. R–1708]

RIN 7100–AF82

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AF42

Regulatory Capital Rule: Revised Transition of the Current Expected Credit Losses Methodology for Allowances

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

ACTION: Interim final rule, request for comment.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are inviting comment on an interim final rule that delays the estimated impact on regulatory capital stemming from the implementation of Accounting Standards Update No. 2016–13, Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments (CECL). The interim final rule provides banking organizations that implement CECL before the end of 2020 the option to delay for two years an estimate of CECL's effect on regulatory capital, relative to the incurred loss methodology's effect on regulatory capital, followed by a three-year transition period. The agencies are providing this relief to allow such banking organizations to better focus on supporting lending to creditworthy households and businesses in light of recent strains on the U.S. economy as a result of the coronavirus disease 2019 (COVID–19), while also maintaining the quality of regulatory capital.

DATES: *Effective date:* The interim final rule is effective March 31, 2020. *Comment date:* Comments on the interim final rule must be received no later than May 15, 2020.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the agencies. Commenters are encouraged to use the title ''Regulatory Capital Rule: Revised Transition of the Current Expected Credit Losses Methodology for Allowances'' 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 ''Regulatory Capital Rule: Revised Transition of the Current Expected Credit Losses Methodology for Allowances'' 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–2020–0010'' 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.

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- *E-mail: 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.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0010'' 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:

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Regulations.gov Classic: Go to *https://www.regulations.gov/.* Enter ''Docket ID OCC–2020–0010'' 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.

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The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1708 and RIN 7100–AF82, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include docket number and RIN in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove sensitive personally identifiable information at the commenter's request. 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–AF42, by any of the following methods:

- *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the Agency website.
- *Email: comments@fdic.gov.* Include the RIN 3064–AF42 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/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.

Instructions: Comments submitted must include ''FDIC'' and ''RIN 3064–AF42.'' Comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

OCC: Margot Schwadron, Director, or Benjamin Pegg, Risk Expert, Capital and Regulatory Policy, (202) 649–6370; or Kevin Korzeniewski, Counsel, or Marta Stewart-Bates, 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: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Juan C. Climent, Manager, (202) 872–7526; Andrew Willis, Lead Financial Institution Policy Analyst, (202) 912–4323; or Michael Ofori-Kuragu, Senior Financial Institution Policy Analyst II, (202) 475–6623, Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; David W. Alexander, Senior Counsel, (202) 452–2877; or Jonah Kind, Senior Attorney, (202) 452–2045, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Bobby R. Bean, Associate Director, *bbean@fdic.gov;* Benedetto Bosco, Chief, Capital Policy Section, *bbosco@fdic.gov;* Noah Cuttler, Senior Policy Analyst, *ncuttler@fdic.gov;* Andrew Carayiannis, Senior Policy Analyst, *acarayiannis@fdic.gov; regulatorycapital@fdic.gov;* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–6888; or Michael Phillips, Counsel, *mphillips@fdic.gov;* Catherine Wood, Counsel, *cawood@fdic.gov;* Francis Kuo, Counsel, *fkuo@fdic.gov;* Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (800) 925–4618.

SUPPLEMENTARY INFORMATION:

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I. Background

In 2016, the Financial Accounting Standards Board issued Accounting Standards Update No. 2016–13, *Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments.*[1] The update resulted in significant changes to credit loss accounting under U.S. generally accepted accounting principles (U.S. GAAP). The revisions to credit loss accounting under U.S. GAAP included the introduction of the current expected credit losses methodology (CECL), which replaces the incurred loss methodology for financial assets measured at amortized cost. For these assets, CECL requires banking organizations[2] to recognize lifetime expected credit losses and to incorporate reasonable and supportable forecasts in developing an estimate of lifetime expected credit losses, while also maintaining the current requirement that banking organizations consider past events and current conditions.

On February 14, 2019, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) issued a final rule that revised certain regulations to account for the aforementioned changes to credit loss accounting under U.S. GAAP, including CECL (the 2019 CECL rule).[3] The 2019 CECL rule revised the agencies' regulatory capital rule (capital rule),[4] stress testing rules, and regulatory disclosure requirements to reflect CECL, and made conforming amendments to other regulations that reference credit loss allowances. The 2019 CECL rule applies to banking organizations that file regulatory reports that are uniform and consistent with U.S. GAAP,[5] including banking

[1] ASU 2016–13 covers measurement of credit losses on financial instruments and includes three subtopics within Topic 326: (i) Subtopic 326–10 Financial Instruments—Credit Losses—Overall; (ii) Subtopic 326–20: Financial Instruments—Credit Losses—Measured at Amortized Cost; and (iii) Subtopic 326–30: Financial Instruments—Credit Losses—Available-for-Sale Debt Securities.

[2] Banking organizations subject to the capital rule include national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, appendix C), but exclude certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities or that are estate trusts, and bank holding companies and savings and loan holding companies that are employee stock ownership plans.

[3] 84 FR 4222 (February 14, 2019).

[4] 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

[5] *See* 12 U.S.C. 1831n; *See also* current versions of the following: Instructions for Preparation of Consolidated Financial Statements for Holding Companies, Reporting Form FR Y–9C; Instructions

organizations that are subject to the capital rule and those that are subject to stress testing requirements.

The 2019 CECL rule also included a transition option that allows banking organizations to phase in over a three-year period the day-one adverse effects of CECL on their regulatory capital ratios. The agencies intended for the transition option to address concerns that despite adequate capital planning, unexpected economic conditions at the time of CECL adoption could result in higher-than-anticipated increases in allowances. This is largely because CECL requires banking organizations to consider current and future expected economic conditions to estimate credit loss allowances.

The spread of coronavirus disease 2019 (COVID–19) has disrupted economic activity in many countries, including the United States. While the U.S. government is taking significant steps to mitigate the magnitude and persistence of the effects of COVID–19, the magnitude and persistence of the overall effects on the economy remain highly uncertain. This uncertainty has presented significant operational challenges to banking organizations at the same time they have been required to direct significant resources to implement CECL. In addition, due to the nature of CECL and the uncertainty of future economic forecasts, banking organizations that have adopted CECL may continue to experience higher-than-anticipated increases in credit loss allowances.

To address these concerns and allow banking organizations to better focus on supporting lending to creditworthy households and businesses, the agencies are providing banking organizations that adopt in the current environment an alternate option to temporarily delay a measure of CECL's effect on regulatory capital, relative to the incurred loss methodology. The transitional relief provided in the interim final rule is intended to be simple to implement without imposing undue operational burden, while reducing the potential for competitive inequities across banking organizations during this time of economic uncertainty and maintaining the quality of regulatory capital.

II. The Interim Final Rule

The interim final rule provides banking organizations that adopt CECL during the 2020 calendar year with the option to delay for two years the estimated impact of CECL on regulatory capital, followed by a three-year transition period to phase out the aggregate amount of the capital benefit provided during the initial two-year delay (*i.e.,* a five-year transition, in total). The interim final rule does not replace the current three-year transition option in the 2019 CECL rule, which remains available to any banking organization at the time that it adopts CECL. Banking organizations that have already adopted CECL have the option to elect the three-year transition option contained in the 2019 CECL rule or the five-year transition contained in the interim final rule, beginning with the March 31, 2020, Call Report or FR Y–9C.

A banking organization is eligible to use the interim final rule's five-year transition if was required to adopt CECL for purposes of U.S. GAAP (as in effect January 1, 2020) for a fiscal year that begins during the 2020 calendar year, and elects to use the transition option in a Call Report or FR Y–9C (electing banking organization). The interim final rule provides electing banking organizations with a methodology for delaying the effect on regulatory capital of an estimated amount of the increase in the allowance for credit loss (ACL) that can be attributed to the adoption of CECL, relative to the increase in the allowance for loan and lease losses (ALLL) that would occur for banking organizations operating under the incurred loss methodology.

A. Approximating the Impact of CECL

The agencies considered different ways to determine the portion of credit loss allowances attributable to CECL eligible for the transitional relief provided in this interim final rule. To best capture the effects of CECL on regulatory capital, it would be necessary for a banking organization to charge against retained earnings (and common equity tier 1 capital), on a quarterly basis, provisions for credit losses estimated under the incurred loss methodology, and to exclude additional provisions for credit losses estimated under CECL. This approach, however, would require a banking organization to maintain the equivalent of two separate loss provisioning processes. For many banking organizations that have adopted CECL, it may be burdensome to track credit loss allowances under both CECL and the incurred loss methodology, due to significant CECL-related changes already incorporated in internal systems or third-party vendor systems.

To address this concern regarding burden and to promote a consistent approach across electing banking organizations, the interim final rule provides a uniform approach for estimating the effect of CECL during the five-year transition period. Specifically, the interim final rule introduces a scaling factor that approximates the average after-tax provision for credit losses attributable to CECL, relative to the incurred loss methodology, in a given reporting quarter. The interim final rule uses a 25 percent scaling factor as an approximation of the impact of differences in credit loss allowances reflected under CECL versus the incurred loss methodology. Various analyses suggest that credit losses under CECL can be expected to be higher than under the incurred loss methodology.[6] The calibration of the scaling factor is also designed to promote competitive equity in the current economic environment between electing banking organizations and those banking organizations that have not yet adopted CECL.

B. Mechanics of the Five-Year Transition Provision

An electing banking organization must calculate transitional amounts for the following items: Retained earnings, temporary difference deferred tax assets (DTAs), and credit loss allowances eligible for inclusion in regulatory capital. For each of these items, the transitional amount is equal to the difference between the electing banking organization's closing balance sheet amount for the fiscal year-end immediately prior to its adoption of CECL (pre-CECL amount) and its balance sheet amount as of the beginning of the fiscal year in which it adopts CECL (post-CECL amount). To calculate the transition for these items, an electing banking organization must first calculate the CECL transitional amount, the adjusted allowances for credit losses (AACL) transitional amount, and the DTA transitional amount, consistent with the 2019 CECL

for Preparation of Consolidated Reports of Condition and Income, Reporting Forms FFIEC 031 and FFIEC 041; Instructions for Preparation of Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than $1 Billion, Reporting Form FFIEC 051.

[6] *See* Loudis, Bert and Ben Ranish. (2019) ''CECL and the Credit Cycle.'' Finance and Economics Discussion Series Working Paper 061. Available at: *https://www.federalreserve.gov/econres/feds/files/2019061pap.pdf* and Covas, Francisco and William Nelson. ''Current Expected Credit Loss: Lessons from 2007–2009.'' (2018) Banking Policy Institute Working Paper. Available at: *https://bpi.com/wpcontent/uploads/2018/07/CECL_WP-2.pdf;* the agencies reviewed data from public securities filings of various large banking organizations. These organizations reported allowances and provisions under CECL, on a weighted-average basis, approximately 30 percent higher on a pre-tax basis and 25 percent higher on an after-tax basis. The agencies chose a scalar closer to the after-tax median to avoid additional burden involved with making quarterly tax adjustments throughout the transition period.

rule. The CECL transitional amount is equal to the difference between an electing banking organization's pre-CECL and post-CECL amounts of retained earnings at adoption. The AACL transitional amount is equal to the difference between an electing banking organization's pre-CECL amount of ALLL and its post-CECL amount of AACL at adoption. The DTA transitional amount is the difference between an electing banking organization's pre-CECL amount and post-CECL amount of DTAs at adoption due to temporary differences.

An electing banking organization must adjust several key inputs to regulatory capital for purposes of the five-year transition. First, an electing banking organization must increase retained earnings by a modified CECL transitional amount. The modified CECL transitional amount is similar to the CECL transitional amount, but is adjusted to reflect changes in retained earnings due to CECL that occur during the first two years of the five-year transition period. The change in retained earnings due to CECL is calculated by taking the change in reported AACL relative to the day CECL was adopted, and applying a scaling multiplier of .25 during the first two years of the transition period.

Second, an electing banking organization must decrease AACL by the modified AACL transitional amount. The modified AACL transitional amount is similar to the AACL transitional amount, but reflects the change in AACL due to CECL that occurs during the first two years of the five-year transition period. The change in AACL due to CECL is calculated with the same method used for the modified CECL transitional amount.

Two additional regulatory capital inputs—temporary difference DTAs, and average total consolidated assets—are also subject to adjustments. Reported average total consolidated assets for purposes of the leverage ratio is increased by the amount of the modified CECL transitional amount, and temporary difference DTAs are decreased by the DTA transitional amount as under the 2019 CECL rule.

The modified CECL and AACL transitional amounts will be calculated on a quarterly basis during the first two years of the transition period. An electing banking organization will reflect the modified transitional amount which includes 100 percent of the day one impact of CECL plus the quarterly changes that result from CECL in transition amounts applied to regulatory capital calculations. After two years, the cumulative amount of quarterly-modified transitional amounts become fixed and are phased out of regulatory capital along with the transitional amounts that were calculated to reflect the day one impact of CECL. The transitional phase out occurs over the subsequent three-year period: 75 percent of transitional amounts are recognized in regulatory capital in year three; 50 percent in year four; and 25 percent in year five. After that point the banking organization would have fully reversed out the temporary regulatory capital benefits of the two-year delay and adjustments.

Finally, an electing banking organization will apply the adjustments calculated above during each quarter of the transition period for purposes of calculating the banking organization's regulatory capital. No adjustments are reflected in balance sheet or income statement amounts. The banking organization reflects the transition adjustment to the extent the banking organization has reflected CECL in the Call Report or FR Y–9C, as applicable, in that quarter. If the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) becomes law and a banking organization chooses to revert to the incurred loss methodology pursuant to the CARES Act in any quarter in 2020, the banking organization would not apply any transition amounts in that quarter but would be allowed to apply the transition in subsequent quarters when the banking organization returns to the use of CECL. However, an institution that has elected the transition, but does not apply it in any quarter, does not receive any extension of the transition period.

TABLE 1—CECL TRANSITIONAL AMOUNTS TO APPLY TO REGULATORY CAPITAL COMPONENTS DURING THE FINAL THREE YEARS OF THE FIVE-YEAR TRANSITION

	Year 3	Year 4	Year 5
Increase retained earnings and average total consolidated assets by the following percentages of the modified CECL transitional amount. *Decrease* temporary difference DTAs by the following percentages of the DTA transitional amount ... *Decrease* AACL by the following percentages of the modified AACL transitional amount.	75%	50%	25%

C. Other Key Revisions

The interim final rule similarly adjusts the transitional amounts related to eligible credit reserves for advanced approaches banking organizations[7] that elect to use the 2020 CECL five-year transition option. The interim final rule also adjusts the transitional amounts related to the supplementary leverage ratio's total exposure amount. Advanced approaches banking organizations that elect the five-year transition will continue to be required to disclose two sets of regulatory capital ratios in section 173 of the capital rule: One set would reflect the banking organization's capital ratios with the CECL transition option and the other set would reflect the banking organization's capital ratios on a fully phased-in basis.

The interim final rule provides banking organizations that were required to adopt CECL for purposes of accounting under U.S. GAAP (as in effect January 1, 2020) in 2020, but that do not use CECL for regulatory reporting or regulatory capital purposes, with flexibility to elect the CECL transition when the banking organization is required to begin using CECL for regulatory reporting purposes. A banking organization that chooses to delay use of CECL for regulatory reporting but elects to use CECL during 2020 would also be eligible for a five-year transition period.

The interim final rule maintains other aspects of the CECL transition option, such as the requirements for business combinations.[8] Through the supervisory process, the agencies will continue to examine banking organizations' credit loss estimates and allowance balances regardless of whether the banking

[7] A banking organization is an advanced approaches banking organization if it (1) is a global systemically important bank holding company, (2) is a Category II banking organization, (3) has elected to be an advanced approached banking organization, (4) is a subsidiary of a company that is an advanced approaches banking organization, or (5) has a subsidiary depository institution that is an advanced approaches banking organization. *See* 12 CFR 3.100 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC).

[8] 12 CFR 3.301(c)(4) (OCC); 217.301(c)(4) (Board); 324.301(c)(4) (FDIC).

organization has elected to use the CECL transition option. In addition, the agencies may assess the capital plans at electing banking organizations for ensuring sufficient capital at the expiration of the CECL transition option period.[9]

Question #1: The agencies seek comment on the feasibility of calculating the modified AACL transitional amount, including whether there are more suitable methods for determining the amount, and rationale in support of such methods. In particular, the agencies seek comment on whether banking organizations would prefer to calculate provisions under both the CECL and incurred loss methodologies and use that difference as the basis for the transition, the operational challenges of doing so, and any concerns associated with using such an approach.

Question #2: The agencies seek comment on the feasibility of calculating the modified CECL transitional amount, including whether there are more suitable methods for determining the amount, and rationale in support of such methods.

Question #3: For banks that do not adopt CECL in 2020, including community banking organizations, the agencies seek comment on whether they should consider any modifications to transitions from the 2019 CECL rule to reduce burden in light of recent disruptions in economic activity caused by COVID–19.

Question #4: The agencies seek comment on whether a banking organization that adopts the five-year transition should be required to also transition the change in temporary difference DTAs related to provision expenses recognized for the first two years after CECL adoption. What are the costs associated with such a requirement? Does ignoring the effect on temporary difference DTAs related to provision expenses recognized during years one and two of the five-year transition period when calculating the modified CECL transition amount, relative to a banking organization that applies the incurred loss methodology raise any competitive equity concerns? Would the temporary difference DTAs related to provision expenses during years one and two of the five-year transition period be material for banking organizations and should they be reflected in the 2020 transition?

Question #5: The agencies seek comment on the interaction of the interim final rule and the potential deferral of CECL described in the pending CARES Act. Further, the agencies seek comment on whether the interim final rule's requirement that a banking organization adopt CECL by the end of 2020 in order to be eligible for the five-year transitional relief, limit a banking organization's ability to utilize any potential relief from CECL as described in the pending CARES Act.

III. Impact Assessment

CECL is expected to affect the timing and magnitude of banking organizations' loss provisioning, particularly around periods of economic stress. As recently as late last year, economic conditions appeared stable and the introduction of CECL was expected to have only a modest effect on operations. However, the additional uncertainty due to the introduction of a new credit loss accounting standard in a period of stress associated with COVID–19 poses a unique and unanticipated challenge to business operations.

The agencies intend for the interim final rule to mitigate the extent to which CECL implementation complicates capital planning challenges posed by COVID–19 by making the regulatory capital impact of near-term accounting for credit losses under CECL through the crisis roughly comparable to the regulatory capital impact under the incurred loss methodology. To do so, the five-year transition includes the entire day-one impact as well as an estimate of the incremental increase in credit loss allowances attributable to CECL as compared to the incurred loss methodology. With the five-year transition option provided by the interim final rule, banking organizations have time to adapt capital planning under stress to the new standard, improving their flexibility and enhancing their ability to serve as a source of credit to the U.S. economy.

The uniform 25 percent scaling factor is only an approximation of the impact of differences in provisions reflected under CECL versus incurred loss methodology. Each institution will have a unique impact due to the adoption of CECL, which may be higher or lower than the amount calculated using the scaling factor. Additionally, the transition option does not directly address likely differences in the timing of loss recognition under CECL and the incurred loss methodology. To the extent that allowances related to COVID–19 build sooner under CECL than they would have under the incurred loss methodology, the transition option provided in the interim final rule will not fully offset the capital impact of CECL. However, the agencies believe that there is a significant benefit to operational simplicity from using a single scalar for the quarterly adjustments for all electing banking organizations.

IV. Administrative Law Matters

A. Administrative Procedure Act

The agencies are issuing this interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[10] Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [11]

The agencies believe that the public interest is best served by implementing the interim final rule as soon as possible. As discussed above, recent events have suddenly and significantly affected global economic activity. In addition, financial markets have experienced significant volatility. The magnitude and persistence of the overall effects on the economy remain highly uncertain.

The CECL transition rule was adopted by the agencies to address concerns that despite adequate capital planning, uncertainty about the economic environment at the time of CECL adoption could result in higher-than-anticipated increases in credit loss allowances. Because of recent economic dislocations and disruptions in financial markets, banking organizations may face higher-than-anticipated increases in credit loss allowances. The interim final

[9] The Board is extending the due date for the Y–14A collection of supplemental CECL information from April 6th until May 11th (due date of the March 31 FR Y–9C) and is including changes in the Y–14A instructions to align with the changes outlined in the interim final rule. These changes are effective for the submission associated with the FR Y–14 as of December 31, 2019.

Under the Federal Reserve's December 2018 amendments to its stress test rules, a banking organization that had adopted CECL in 2020 was required to include the impact of CECL into their stressed projections beginning in the 2020 stress testing cycle. As a result of this interim final rule, firms that have already adopted CECL have the option to either include the adjustments from this interim final rule in their 2020 stress projections or delay doing so. As noted in the 2020 CCAR summary instructions, the Federal Reserve will not issue supervisory findings on banking organizations' stressed estimates of allowances under CECL until the 2022 CCAR cycle, at the earliest.

[10] 5 U.S.C. 553.

[11] 5 U.S.C. 553(b)(B).

rule is intended to mitigate some of the uncertainty that comes with the increase in credit loss allowances during a challenging economic environment by temporarily limiting the approximate effects of CECL in regulatory capital. This will allow banking organizations to better focus on supporting lending to creditworthy households and businesses.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[12] Because the rules relieve a restriction, the interim final rule is exempt from the APA's delayed effective date requirement.[13] Additionally, the agencies find good cause to publish the interim final rule with an immediate effective date for the same reasons set forth above under the discussion of section 553(b)(B) of the APA.

While the agencies believe that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the agencies are interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act, the OMB makes a determination as to whether a final rule constitutes a "major" rule.[14] If a rule is deemed a "major rule" by the Office of Management and Budget (OMB), the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[15]

The Congressional Review Act defines a "major rule" as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[16]

For the same reasons set forth above, the agencies are adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[17] In light of current market uncertainty, the agencies believe that delaying the effective date of the rule would be contrary to the public interest.

As required by the Congressional Review Act, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The interim final rule affects the agencies' current information collections for the Call Reports (OCC OMB Control No. 1557–0081; Board OMB Control No. 7100–0036; and FDIC OMB Control No. 3064–0052) and the FFIEC 101 (OCC OMB Control No. 1557–0239; Board OMB Control No. 7100–0319; FDIC OMB Control No. 3064–0159). The Board has reviewed this interim final rule pursuant to authority delegated by the OMB.

While this interim final rule contains no information collection requirements, the agencies have determined that there are changes that should be made to the Call Reports and the FFIEC 101 as a result of this rulemaking. Although there may be a substantive change resulting from the temporary delay of recognition of credit loss allowances in regulatory capital for purposes of the Call Reports and the FFIEC 101, the change should be minimal and result in a zero net change in hourly burden under the agencies' information collections. Submissions will, however, be made by the agencies to OMB. The changes to the Call Reports, the FFIEC 101 and their related instructions will be addressed in a separate **Federal Register** notice.

However, the Board has temporarily revised certain reporting forms to accurately reflect various aspects of this interim final rule. These reporting forms are the Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128) and Capital Assessments and Stress Testing Reports (FR Y–14A/Q/M; OMB No. 7100–0341). On June 15, 1984, OMB delegated to the Board authority under the PRA to temporarily approve a revision to a collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation.

The Board's delegated authority requires that the Board, after temporarily approving a collection, solicit public comment to extend the information collections for a period not to exceed three years. Therefore, the Board is inviting comment to extend each of these information collections for three years, with the revisions discussed below.

The Board invites public comment on the following information collections, which are being reviewed under authority delegated by the OMB under the PRA. Comments must be submitted on or before June 1, 2020. Comments are invited on the following:

a. Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the 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 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.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the collections.

[12] 5 U.S.C. 553(d).

[13] 5 U.S.C. 553(d)(1).

[14] 5 U.S.C. 801 *et seq.*

[15] 5 U.S.C. 801(a)(3).

[16] 5 U.S.C. 804(2).

[17] 5 U.S.C. 808.

Final Approval Under OMB Delegated Authority of the Temporary Revision of, and Solicitation of Comment To Extend for Three Years, With Revision, of the Following Information Collections

(1) *Report title:* Financial Statements for Holding Companies.

Agency form number: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Effective date: March 31, 2020.

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies, savings and loan holding companies,[18] securities holding companies, and U.S. intermediate holding companies (collectively, HCs).

Estimated number of respondents: FR Y–9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 7; FR Y–9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 35; FR Y–9C (non-advanced approaches, non CBLR, HCs with less than $5 billion in total assets): 84; FR Y–9C (non-advanced approaches, non CBLR HCs, with $5 billion or more in total assets): 154; FR Y–9C (advanced approaches HCs): 19; FR Y–9LP: 434; FR Y–9SP: 3,960; FR Y–9ES: 83; FR Y–9CS: 236.

Estimated average hours per response:

Reporting

FR Y–9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 29.14 hours; FR Y–9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 35.11; FR Y–9C (non-advanced approaches, non CBLR HCs, with less than $5 billion in total assets): 40.98; FR Y–9C (non-advanced approaches, non CBLR, HCs with $5 billion or more in total assets): 46.95 hours; FR Y–9C (advanced approaches HCs): 48.59 hours; FR Y–9LP: 5.27 hours; FR Y–9SP: 5.40 hours; FR Y–9ES: 0.50 hours; FR Y–9CS: 0.50 hours.

Recordkeeping

FR Y–9C (non-advanced approaches HCs with less than $5 billion in total assets), FR Y–9C (non-advanced approaches HCs with $5 billion or more in total assets), FR Y–9C (advanced approaches HCs), and FR Y–9LP: 1.00 hour; FR Y–9SP, FR Y–9ES, and FR Y–9CS: 0.50 hours.

Estimated annual burden hours:

Reporting

FR Y–9C (non-advanced approaches CBLR HCs with less than $5 billion in total assets): 8,276 hours; FR Y–9C (non-advanced approaches CBLR HCs with $5 billion or more in total assets): 4,915; FR Y–9C (non-advanced approaches non CBLR HCs with less than $5 billion in total assets): 13,769; FR Y–9C (non-advanced approaches non CBLR HCs with $5 billion or more in total assets): 28,921 hours; FR Y–9C (advanced approaches HCs): 3,693 hours; FR Y–9LP: 9,149 hours; FR Y–9SP: 42,768 hours; FR Y–9ES: 42 hours; FR Y–9CS: 472 hours.

Recordkeeping

FR Y–9C (non-advanced approaches HCs with less than $5 billion in total assets): 620 hours; FR Y–9C (non-advanced approaches HCs with $5 billion or more in total assets): 756 hours; FR Y–9C (advanced approaches HCs): 76 hours; FR Y–9LP: 1,736 hours; FR Y–9SP: 3,960 hours; FR Y–9ES: 42 hours; FR Y–9CS: 472 hours.

General description of report: The FR Y–9C consists of standardized financial statements similar to the Call Reports filed by commercial banks.[19] The FR Y–9C collects consolidated data from HCs and is filed quarterly by top-tier HCs with total consolidated assets of $3 billion or more.[20]

The FR Y–9LP, which collects parent company only financial data, must be submitted by each HC that files the FR Y–9C, as well as by each of its subsidiary HCs.[21] The report consists of standardized financial statements.

The FR Y–9SP is a parent company only financial statement filed semiannually by HCs with total consolidated assets of less than $3 billion. In a banking organization with total consolidated assets of less than $3 billion that has tiered HCs, each HC in the organization must submit, or have the top-tier HC submit on its behalf, a separate FR Y–9SP. This report is designed to obtain basic balance sheet and income data for the parent company, and data on its intangible assets and intercompany transactions.

The FR Y–9ES is filed annually by each employee stock ownership plan (ESOP) that is also an HC. The report collects financial data on the ESOP's benefit plan activities. The FR Y–9ES consists of four schedules: A Statement of Changes in Net Assets Available for Benefits, a Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The FR Y–9CS is a free-form supplemental report that the Board may utilize to collect critical additional data deemed to be needed in an expedited manner from HCs on a voluntary basis. The data are used to assess and monitor emerging issues related to HCs, and the report is intended to supplement the other FR Y–9 reports. The data items included on the FR Y–9CS may change as needed.

Legal authorization and confidentiality: The Board has the authority to impose the reporting and recordkeeping requirements associated with the Y–9 family of reports on bank holding companies (''BHCs'') pursuant to section 5 of the Bank Holding Company Act (''BHC Act''), (12 U.S.C. 1844); on savings and loan holding companies pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act, (12 U.S.C. 1467a(b)(2) and (3)); on U.S. intermediate holding companies (''U.S. IHCs'') pursuant to section 5 of the BHC Act, (12 U.S.C. 1844), as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), (12 U.S.C. 511(a)(1) and 5365); and on securities holding companies pursuant to section 618 of the Dodd-Frank Act, (12 U.S.C. 1850a(c)(1)(A)). The FR Y–9 series of reports, and the recordkeeping requirements set forth in the respective instructions to each report, are mandatory, except for the FR Y–9CS, which is voluntary.

With respect to the FR Y–9C, Schedule HI's memoranda item 7(g), Schedule HC–P's item 7(a), and Schedule HC–P's item 7(b) are considered confidential commercial and financial information under exemption 4 of the Freedom of Information Act (''FOIA''), (5 U.S.C. 552(b)(4)), as is Schedule HC's memorandum item 2.b. for both the FR Y–9C and FR Y–9SP reports.

Aside from the data items described above, the remaining data items on the FR Y–9 reports are generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information (12 CFR part 261), however, a respondent may request confidential treatment for any data items the respondent believes

[18] An SLHC must file one or more of the FR Y–9 series of reports unless it is: (1) A grandfathered unitary SLHC with primarily commercial assets and thrifts that make up less than 5 percent of its consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

[19] The Call Reports consist of the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $5 Billion (FFIEC 051), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041) and the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031).

[20] Under certain circumstances described in the FR Y–9C's General Instructions, HCs with assets under $3 billion may be required to file the FR Y–9C.

[21] A top-tier HC may submit a separate FR Y–9LP on behalf of each of its lower-tier HCs.

should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate, and will inform the respondent if the request for confidential treatment has been denied.

To the extent that the instructions, to the FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9ES reports, each respectively direct a financial institution to retain the workpapers and related materials used in preparation of each report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information may be considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). In addition, the financial institution's workpapers and related materials may also be protected by exemption 4 of the FOIA, to the extent such financial information is treated as confidential by the respondent (5 U.S.C. 552(b)(4)).

Current Actions: The Board has temporarily revised the instructions to FR Y–9C report to accurately reflect the CECL transition provision as modified by this interim final rule. Specifically, the Board has temporarily revised the instructions to the following FR Y–9C, Schedule HC–R, Part I, line items:

- Item 2 (Retained earnings),
- Item 2.a (CECL transition election in effect as of the quarter-end report date?),
- Item 15.a (Less: DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs that exceed the 25 percent of line 12,
- Item 15.b (Less: DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs, that exceed the 10 percent common equity tier 1 capital deduction threshold,
- Item 27 (Average total consolidated assets),
- Item 40 (a) (Allowance for loan and lease losses includable in tier 2 capital), and
- Item 40 (b) (Advanced approaches holding companies that exit parallel run only): Eligible credit reserves includable in tier 2 capital.

as well as FR Y–9C, Schedule HC–R, Part II, Item 8 (All other assets). The Board has determined that the revisions to the FR Y–9C described above must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of inaccurate information, and would interfere with the Board's ability to perform its statutory duties.

The Board also invites comment to extend the FR Y–9 for three years, with the revisions described above.

(2) *Report title:* Capital Assessments and Stress Testing Reports.

Agency form number: FR Y–14A/Q/M.

OMB control number: 7100–0341.

Effective date: December 31, 2019.

Frequency: Annually, quarterly, and monthly.

Respondents: These collections of information are applicable to BHCs, U.S. IHCs, and savings and loan holding companies (SLHCs) [22] (collectively, ''holding companies'') with $100 billion or more in total consolidated assets, as based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Holding Companies (FR Y–9C); or (ii) if the firm has not filed an FR Y–9C for each of the most recent four quarters, then the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9Cs. Reporting is required as of the first day of the quarter immediately following the quarter in which the respondent meets this asset threshold, unless otherwise directed by the Board.

Estimated number of respondents: FR Y–14A/Q: 36; FR Y–14M: 34.[23]

Estimated average hours per response: FR Y–14A: 1,085 hours; FR Y–14Q: 1,920 hours; FR Y–14M: 1,072 hours; FR Y–14 On-going Automation Revisions: 480 hours; FR Y–14 Attestation On-going Attestation: 2,560 hours.

Estimated annual burden hours: FR Y–14A: 39,060 hours; FR Y–14Q: 276,480 hours; FR Y–14M: 437,376 hours; FR Y–14 On-going Automation Revisions: 17,280 hours; FR Y–14 Attestation On-going Attestation: 33,280 hours.

General description of report: This family of information collections is composed of the following three reports:

The annual [24] FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[25]

The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, trading assets, and PPNR for the reporting period.

The monthly FR Y–14M is comprised of three retail portfolio- and loan-level schedules, and one detailed address-matching schedule to supplement two of the portfolio and loan-level schedules.

The data collected through the FR Y–14A/Q/M reports provide the Board with the information needed to help ensure that large firms have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities, and resulting risk exposures. The reports are used to support the Board's annual Comprehensive Capital Analysis and Review (CCAR) and Dodd-Frank Act Stress Test (DFAST) exercises, which complement other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources, as well as regular assessments of credit, market and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of respondent financial institutions. Compliance with the information collection is mandatory.

Current actions: The Board has temporarily revised the instructions to FR Y–14A report to accurately reflect

[22] SLHCs with $100 billion or more in total consolidated assets become members of the FR Y–14Q and FR Y–14M panels effective June 30, 2020, and the FR Y–14A panel effective December 31, 2020. *See* 84 FR 59032 (November 1, 2019).

[23] The estimated number of respondents for the FR Y–14M is lower than for the FR Y–14Q and FR Y–14A because, in recent years, certain respondents to the FR Y–14A and FR Y–14Q have not met the materiality thresholds to report the FR Y–14M due to their lack of mortgage and credit activities. The Board expects this situation to continue for the foreseeable future.

[24] In certain circumstances, a BHC or IHC may be required to re-submit its capital plan. *See* 12 CFR 225.8(e)(4). Firms that must re-submit their capital plan generally also must provide a revised FR Y–14A in connection with their resubmission.

[25] On October 10, 2019, the Board issued a final rule that eliminated the requirement for firms subject to Category IV standards to conduct and publicly disclose the results of a company-run stress test. *See* 84 FR 59032 (Nov. 1, 2019). That final rule maintained the existing FR Y–14 substantive reporting requirements for these firms in order to provide the Board with the data it needs to conduct supervisory stress testing and inform the Board's ongoing monitoring and supervision of its supervised firms. However, as noted in the final rule, the Board intends to provide greater flexibility to banking organizations subject to Category IV standards in developing their annual capital plans and consider further change to the FR Y–14 forms as part of a separate proposal. *See* 84 FR 59032, 59063.

the CECL transition provision as modified by this interim final rule. Specifically, the Board has temporarily revised the FR Y–14A general instructions, as well as the instructions to the following FR Y–14A schedules or line items:

- Schedule A.1.d (Capital);
- Schedule A.1.d, Line item 20 (Retained earnings);
- Schedule A.1.d, Line item 39 (DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs, that exceed the 10 percent common equity tier 1 capital deduction threshold);
- Schedule A.1.d, Line item 54 (Allowance for loan and lease losses includable in tier 2 capital);
- Schedule A.1.d, Line item 77 (DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs); and
- Collection of Supplemental CECL Information, Line Item 2 (Institutions applying the CECL transition provision),

In addition, the Board has delayed the due date for the December 31, 2019, FR Y–14A, Collection of Supplemental CECL Information from April 6, 2020, to May 11, 2020, to correspond with the submission date for the March 31, 2020, FR Y–9C report. The Board has determined that the revisions to the FR Y–14A/Q/M reports described above must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of inaccurate information, and would interfere with the Board's ability to perform its statutory duties.

The Board also invites comment to extend the FR Y–14A/Q/M for three years, with the revisions described above.

Legal authorization and confidentiality: The Board has the authority to require BHCs to file the FR Y–14 reports pursuant to section 5(c) of the BHC Act, 12 U.S.C. 1844(c), and pursuant to section 165(i) of the Dodd-Frank Act, 12 U.S.C. 5365(i). The Board has authority to require SLHCs to file the FR Y–14 reports pursuant to section 10(b) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)). Lastly, the Board has authority to require U.S. IHCs of FBOs to file the FR Y–14 reports pursuant to section 5 of the BHC Act, as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Act, 12 U.S.C. 5311(a)(1) and 5365. In addition, section 401(g) of EGRRCPA, 12 U.S.C. 5365 note, provides that the Board has the authority to establish enhanced prudential standards for foreign banking organizations with total consolidated assets of $100 billion or more, and clarifies that nothing in section 401 ''shall be construed to affect the legal effect of the final rule of the Board. . entitled 'Enhanced Prudential Standard for [BHCs] and Foreign Banking Organizations' (79 FR 17240 (March 27, 2014)), as applied to foreign banking organizations with total consolidated assets equal to or greater than $100 million.'' [26] The FR Y–14 reports are mandatory. The information collected in the FR Y–14 reports is collected as part of the Board's supervisory process, and therefore, such information is afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(8). In addition, confidential commercial or financial information, which a submitter actually and customarily treats as private, and which has been provided pursuant to an express assurance of confidentiality by the Board, is considered exempt from disclosure under exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [27] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[28] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the agencies have determined for good cause that general notice and opportunity for public comment is impracticable and contrary to the public's interest, and therefore the agencies are not issuing a notice of proposed rulemaking. Accordingly, the agencies have concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply. Nevertheless, the agencies seek comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[29] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[30] For the reasons described above, the agencies find good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date.

As such, the final rule will be effective on immediately. Nevertheless, the agencies seek comment on RCDRIA.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [31] requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the interim final rule in a simple and straightforward manner. The agencies invite comments on whether there are additional steps it could take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation

[26] The Board's final rule referenced in section 401(g) of EGRRCPA specifically stated that the Board would require IHCs to file the FR Y–14 reports. *See* 79 FR 17240, 17304 (March 27, 2014).

[27] 5 U.S.C. 601 *et seq.*

[28] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. *See* 13 CFR 121.201.

[29] 12 U.S.C. 4802(a).

[30] 12 U.S.C. 4802.

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

easier to understand? If so, what changes to the format would make the regulation easier to understand?

• What else could we do to make the regulation easier to understand?

G. Unfunded Mandates

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* requires the preparation of a budgetary impact statement before promulgating a rule that 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. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. See 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this interim final rule, the OCC has not prepared an economic analysis of the rule under the UMRA.

List of Subjects

12 CFR Part 3

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

12 CFR Part 217

Administrative practice and procedure, Banks, Banking, Capital, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Risk, Securities.

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

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

Subpart G—Transition Provisions

■ 2. Amend § 3.301 by:

■ a. Revising paragraphs (a)(1) and (2), (b)(1), and (c)(1) introductory text;

■ b. Redesignating paragraphs (c)(3) and (4) as paragraphs (e) and (f);

■ c. Adding paragraph (d);

■ d. Adding headings for newly redesignated paragraphs (e) and (f);

■ e. In newly redesignated paragraph (f) introductory text, removing ''paragraph'' and adding ''paragraph (f)'' in its place; and

■ f. Further redesignating newly redesignated paragraphs (f)(i) and (ii) as paragraphs (f)(1) and (2).

The revisions and addition read as follows:

§ 3.301 Current Expected Credit Losses (CECL) transition.

(a) * * *

(1) Except as provided in paragraph (d) of this section, a national bank or Federal savings organization may elect to use a CECL transition provision pursuant to this section only if the national bank or Federal savings association records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL.

(2) A national bank or Federal savings association that is required to use CECL for regulatory reporting purposes that intends to use the CECL transition provision must elect to use the CECL transition provision in the first Call Report that includes CECL filed by the national bank or Federal savings association after it is required to use CECL for regulatory reporting purposes.

* * * * *

(b) * * *

(1) *Transition period* means, the three-year period, beginning the first day of the fiscal year in which a national bank or Federal savings association adopts CECL and reflects CECL in its first Call Report; or, for the 2020 transition under paragraph (d) of this section, the five-year period beginning on the earlier of the date a national bank or Federal savings association was required to adopt CECL for accounting purposes under U.S. GAAP (as in effect January 1, 2020), or the first day of the quarter in which the national bank or Federal savings association files regulatory reports that include CECL.

* * * * *

(c) * * *

(1) For purposes of the election described in paragraph (a)(1) of this section and except as provided in paragraph (d) of this section, a national bank or Federal savings association must make the following adjustments in its calculation of regulatory capital ratios:

* * * * *

(d) *2020 CECL transition provision.* A national bank or Federal savings association that was required to adopt CECL for accounting purposes under U.S. GAAP (as in effect on January 1, 2020) as of the first day of a fiscal year that begins during the 2020 calendar year, and that makes the election described in paragraph (a)(1) of this section, may use the transitional amounts and adjusted transitional amounts in paragraph (d)(1) of this section with the 2020 CECL transition calculation in paragraph (d)(2) of this section to adjust its calculation of regulatory capital ratios during each quarter of the transition period in which a national bank or Federal savings association uses CECL for purposes of its Call Report. A national bank or Federal savings association that did not make the election described in paragraph (a)(1) of this section because it did not record a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the national bank or Federal savings association adopted CECL may use the transition provision in this paragraph (d) if it has a positive modified CECL transitional amount during any quarter ending in 2020 and makes the election in the Call Report or FR Y–9C filed for the same quarter.

(1) *Definitions.* For purposes of the 2020 CECL transition calculation in paragraph (d)(2) of this section, the following definitions apply:

(i) *Modified CECL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the CECL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the CECL transitional amount.

(ii) *Modified AACL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the AACL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL, multiplied by 0.25, plus the AACL transitional amount.

(2) *Calculation of 2020 CECL transition provision.* (i) A national bank or Federal savings association that has made the election described in paragraph (a)(1) of this section in its first Call Report filed during the 2020 calendar year that reflects CECL adoption may make the following adjustments in its calculation of regulatory capital ratios:

(A) Increase retained earnings by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase retained earnings by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase retained earnings by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase retained earnings by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase retained earnings by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period;

(B) Decrease amounts of DTAs arising from temporary differences by one-hundred percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by one hundred percent of its DTA transitional amount during the second year of the transition period, decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the third year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the fourth year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the fifth year of the transition period;

(C) Decrease amounts of AACL by one-hundred percent of its modified AACL transitional amount during the first year of the transition period, decrease amounts of AACL by one hundred percent of its modified AACL transitional amount during the second year of the transition period, decrease amounts of AACL by seventy-five percent of its modified AACL transitional amount during the third year of the transition period, decrease amounts of AACL by fifty percent of its modified AACL transitional amount during the fourth year of the transition period, and decrease amounts of AACL by twenty-five percent of its modified AACL transitional amount during the fifth year of the transition period; and

(D) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period.

(ii) An advanced approaches national bank or Federal savings association that has made the election described in paragraph (a)(1) of this section in its first Call Report filed during 2020 may make the following additional adjustments to its calculation of regulatory capital ratios:

(A) Increase total leverage exposure for purposes of the supplementary leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period; and

(B) An advanced approaches national bank or Federal savings association that has completed the parallel run process and has received notification from the OCC pursuant to § 3.121(d) must decrease amounts of eligible credit reserves by one-hundred percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by one hundred percent of its eligible credit reserves transitional amount during the second year of the transition period, decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the third year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the fourth year of the transition period, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the fifth year of the transition period.

(e) *Eligible credit reserves shortfall.* * * *

(f) *Business combinations.* * * *

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board amends chapter II of title 12 of the Code of Federal Regulations as follows:

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

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

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

Subpart G—Transition Provisions

■ 4. Revise § 217.301 to read as follows:

§ 217.301 Current expected credit losses (CECL) transition.

(a) *CECL transition provision.* (1) Except as provided in paragraph (d) of this section, a Board-regulated institution may elect to use a CECL transition provision pursuant to this section only if the Board-regulated institution records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL.

(2) A Board-regulated institution that is required to use CECL when filing its Call Report or FR Y–9C that intends to use the CECL transition provision must elect to use the CECL transition provision in the first Call Report or FR Y–9C that includes CECL filed by the Board-regulated institution after it is required to use CECL for regulatory reporting purposes.

(3) A Board-regulated institution that does not elect to use the CECL transition provision as of the first Call Report or FR Y–9C that includes CECL filed as described in paragraph (a)(2) of this section may not elect to use the CECL transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means, the three-year period beginning the first day of the fiscal year in which a Board-regulated institution adopts CECL and reflects CECL in its first Call Report or FR Y–9C; or, for the 2020 transition under paragraph (d) of this section, the five-year period beginning on the earlier of the date a Board-regulated institution was required to adopt CECL for accounting purposes under U.S. GAAP (as in effect on January 1, 2020), or the first day of the quarter in which the Board-regulated institution files regulatory reports that include CECL.

(2) *CECL transitional amount* means the decrease net of any DTAs in the amount of a Board-regulated institution's retained earnings as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's retained earnings as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(3) *DTA transitional amount* means the increase in the amount of a Board-regulated institution's DTAs arising from temporary differences as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of a Board-regulated institution's AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL and the amount of the Board-regulated institution's ALLL as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the increase in the amount of a Board-regulated institution's eligible credit reserves as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(c) *Calculation of the three-year CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section and except as provided in paragraph (d) of this section, a Board-regulated institution must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period; and

(iv) Increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period.

(2) For purposes of the election described in paragraph (a)(1) of this section, an advanced approaches Board-regulated institution must make the following additional adjustments to its calculation of regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches Board-regulated institution that has completed the parallel run process and has received notification from the Board pursuant to § 217.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition provision, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition period.

(d) *Calculation of the five-year CECL transition provision.* A Board-regulated institution that was required to adopt CECL for accounting purposes under U.S. GAAP (as in effect January 1, 2020) as of the first day of a fiscal year that begins during the 2020 calendar year, and that makes the election described in paragraph (a)(1) of this section, may use the transitional amounts and modified transitional amounts in paragraph (d)(1) of this section with the 2020 CECL transition calculation in paragraph (d)(2) of this section to adjust its calculation of regulatory capital ratios during each quarter of the transition period in which a Board-regulated institution uses CECL for purposes of its Call Report or FR Y–9C. A Board-regulated institution that did not make the election described in paragraph (a)(1) of this section because it did not record a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the Board-regulated institution adopted CECL may use the transition provision in this paragraph (d) if it has a positive modified CECL transitional amount during any quarter ending in 2020, and makes the election in the Call Report of FR Y–9C filed for the same quarter.

(1) *Definitions.* For purposes of the 2020 CECL transition calculation in paragraph (d)(2) of this section, the following definitions apply:

(i) *Modified CECL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report or FR Y–9C, and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by .25, plus the CECL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report or Y–9C at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by 0.25, plus the CECL transitional amount.

(ii) *Modified AACL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report or FR Y–9C, and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by .25, plus the AACL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report or FR Y–9C at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL, multiplied by 0.25, plus the AACL transitional amount.

(2) *Calculation of 2020 CECL transition provision.* (i) A Board-regulated institution that has made the election described in paragraph (a)(1) of this section in a first Call Report or FR Y–9C filed during the 2020 calendar year may make the following adjustments in its calculation of regulatory capital ratios:

(A) Increase retained earnings by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase retained earnings by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase retained earnings by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase retained earnings by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase retained earnings by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period;

(B) Decrease amounts of DTAs arising from temporary differences by one-hundred percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by one hundred percent of its DTA transitional amount during the second year of the transition period, decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the third year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the fourth year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the fifth year of the transition period;

(C) Decrease amounts of AACL by one-hundred percent of its modified AACL transitional amount during the first year of the transition period, decrease amounts of AACL by one hundred percent of its modified AACL transitional amount during the second year of the transition period, decrease amounts of AACL by seventy-five percent of its modified AACL transitional amount during the third year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the fourth year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the fifth year of the transition period; and

(D) Increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period.

(ii) An advanced approaches Board-regulated institution that has made the election described in paragraph (a)(1) of this section in its first Call Report or FR Y–9C filed during 2020 may make the following additional adjustments to its calculation of regulatory capital ratios:

(A) Increase total leverage exposure for purposes of the supplementary leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the fourth year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the fifth year of the transition period; and

(B) An advanced approaches Board-regulated institution that has completed the parallel run process and has received notification from the Board pursuant to § 217.121(d) must decrease amounts of eligible credit reserves by one-hundred percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by one hundred percent of its eligible credit reserves transitional amount during the second year of the transition period, decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the third year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the fourth year of the transition period, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the fifth year of the transition period.

(e) *Eligible credit reserves shortfall.* An advanced approaches Board-regulated institution that has completed the parallel run process and has received notification from the Board pursuant to § 217.121(d), whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount (or modified CECL transitional amount) must decrease its CECL transitional amount used in paragraph (c) of this section (or modified CECL transitional amount used in paragraph (d) of this section) by the full amount of its DTA transitional amount (or modified DTA transitional amount).

(f) *Business combinations.* Notwithstanding any other requirement in this section, for purposes of this paragraph (f), in the event of a business combination involving a Board-regulated institution where one or both Board-regulated institutions have elected the treatment described in this section:

(1) If the acquirer Board-regulated institution (as determined under GAAP) elected the treatment described in this section, the acquirer Board-regulated institution must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(2) If the acquired company (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired company does not transfer to the resulting Board-regulated institution.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 324—CAPITAL ADEQUACY OF FDIC–SUPERVISED INSTITUTIONS

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

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

■ 6. Revise § 324.301 to read as follows:

§ 324.301 Current expected credit losses (CECL) transition.

(a) *CECL transition provision.* (1) Except as provided in paragraph (d) of this section, an FDIC-supervised institution may elect to use a CECL transition provision pursuant to this section only if the FDIC-supervised institution records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL.

(2) An FDIC-supervised institution that is required to use CECL for regulatory reporting purposes that intends to use the CECL transition provision must elect to use the CECL transition provision in the first Call Report that includes CECL filed by the FDIC-supervised institution after it is required to use CECL for regulatory reporting purposes.

(3) An FDIC-supervised institution that does not elect to use the CECL transition provision as of the first Call Report that includes CECL filed as described in paragraph (a)(2) of this section may not elect to use the CECL transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means the three-year period, s beginning the first day of the fiscal year in which an FDIC-supervised institution adopts CECL and reflects CECL in its first Call Report filed after that date; or, for the 2020 transition under paragraph (d) of this section, the five-year period beginning on the earlier of the date an FDIC-supervised institution was required to adopt CECL for accounting purposes under U.S. GAAP (as in effect January 1, 2020), or the first day of the quarter in which the FDIC-supervised institution files regulatory reports that include CECL.

(2) *CECL transitional amount* means the decrease net of any DTAs in the amount of an FDIC-supervised institution's retained earnings as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's retained earnings as of the closing of the fiscal year-end immediately prior to the FDIC-supervised's adoption of CECL.

(3) *DTA transitional amount* means the increase in the amount of an FDIC-supervised institution's DTAs arising from temporary differences as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of an FDIC-supervised institution's AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL and the amount of the FDIC-supervised institution's ALLL as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the increase in the amount of an FDIC-supervised institution's eligible credit reserves as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(c) *Calculation of the three-year CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section and except as provided in paragraph (d) of this section, an FDIC-supervised institution must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period; and

(iv) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period.

(2) For purposes of the election described in paragraph (a)(1) of this section, an advanced approaches FDIC-supervised institution must make the following additional adjustments to its calculation of regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches FDIC-supervised institution that has completed the parallel run process and has received notification from the FDIC pursuant to § 324.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition provision, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition period.

(d) *Calculation of the five-year CECL transition provision.* An FDIC-supervised institution that was required to adopt CECL for accounting purposes under U.S. GAAP (as in effect January 1, 2020) as of the first day of a fiscal year that begins during the 2020 calendar year, and that makes the election described in paragraph (a)(1) of this section, may use the transitional amounts and modified transitional amounts in paragraph (d)(1) of this section with the 2020 CECL transition calculation in paragraph (d)(2) of this section to adjust its calculation of regulatory capital ratios during each quarter of the transition period in which an FDIC-supervised institution uses CECL for purposes of its Call Report. A FDIC supervised-institution that did not make the election described in paragraph (a)(1) of this section because it did not record a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the FDIC-supervised institution adopted CECL may use the transition provision in this paragraph (d) if it has a positive adjusted CECL transitional amount during any quarter ending in 2020 and makes the election in the Call Report or FR Y–9C filed for the same quarter.

(1) *Definitions.* For purposes of the 2020 CECL transition calculation in paragraph (d)(2) of this section, the following definitions apply:

(i) *Modified CECL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by .25, plus the CECL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by 0.25, plus the CECL transitional amount.

(ii) *Modified AACL transitional amount* means:

(A) During the first two years of the transition period, the difference between AACL as reported in the most recent Call Report, and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by .25, plus the AACL transitional amount; and

(B) During the last three years of the transition period, the difference between AACL as reported in the Call Report at the end of the second year of the transition period and the AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL, multiplied by 0.25, plus the AACL transitional amount.

(2) *Calculation of 2020 CECL transition provision.* (i) An FDIC-supervised institution that has made the election described in paragraph (a)(1) of this section in its a Call Report filed during the 2020 calendar year may make the following adjustments in its calculation of regulatory capital ratios:

(A) Increase retained earnings by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase retained earnings by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase retained earnings by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase retained earnings by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase retained earnings by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period;

(B) Decrease amounts of DTAs arising from temporary differences by one-hundred percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by one hundred percent of its DTA transitional amount during the second year of the transition period, decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the third year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the fourth year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the fifth year of the transition period;

(C) Decrease amounts of AACL by one-hundred percent of its modified AACL transitional amount during the first year of the transition period, decrease amounts of AACL by one hundred percent of its modified AACL transitional amount during the second year of the transition period, decrease amounts of AACL by seventy-five percent of its modified AACL transitional amount during the third year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the fourth year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the fifth year of the transition period; and

(D) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its modified CECL transitional amount during the fourth year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its modified CECL transitional amount during the fifth year of the transition period.

(ii) An advanced approaches FDIC-supervised institution that has made the election described in paragraph (a)(1) of this section in its first Call Report filed for the fiscal year that begins during the 2020 calendar year may make the following additional adjustments to its calculation of regulatory capital ratios:

(A) Increase total leverage exposure for purposes of the supplementary leverage ratio by one-hundred percent of its modified CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by one hundred percent of its modified CECL transitional amount during the second year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its modified CECL transitional amount during the third year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the fourth year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the fifth year of the transition period; and

(B) An advanced approaches FDIC-supervised institution that has completed the parallel run process and has received notification from the FDIC pursuant to § 324.121(d) must decrease amounts of eligible credit reserves by one-hundred percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by one hundred percent of its eligible credit reserves transitional amount during the second year of the transition period, decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the third year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the fourth year of the transition period, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the fifth year of the transition period.

(e) *Eligible credit reserves shortfall.* An advanced approaches FDIC-supervised institution that has completed the parallel run process and has received notification from the FDIC pursuant to § 324.121(d), whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount (or modified CECL transitional amount) must decrease its CECL transitional amount used in paragraph (c) of this section (or modified CECL transitional amount used in paragraph (d) of this section) by the full amount of its DTA transitional amount (or modified DTA transitional amount).

(f) *Business combinations.* Notwithstanding any other requirement in this section, for purposes of this paragraph (f), in the event of a business combination involving an FDIC-supervised institution where one or both FDIC-supervised institutions have elected the treatment described in this section:

(1) If the acquirer FDIC-supervised institution (as determined under GAAP) elected the treatment described in this section, the acquirer FDIC-supervised institution must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(2) If the acquired insured depository institution (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired insured depository institution does not transfer to the resulting FDIC-supervised institution.

Morris R. Morgan,

First Deputy Comptroller, Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on or about March 26, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–06770 Filed 3–30–20; 8:45 am]

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0538; Product Identifier 2012–NE–47–AD; Amendment 39–19885; AD 2020–06–16]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce, Deutschland Ltd. & Co. KG (Formerly Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) AD 2017–03–02 for certain Rolls-Royce, Deutschland Ltd. & Co. KG RB211 Trent 768–60, 772–60, and 772B–60 model turbofan engines. AD 2017–03–02 required initial and repetitive ultrasonic inspections (UIs) of the affected low-pressure (LP) compressor blades. This

AD requires initial and repetitive UIs of the affected LP compressor blades and, depending on the results of the UIs, their replacement with a part eligible for installation. This AD was prompted by LP compressor blade partial airfoil release events. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 5, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 5, 2020.

ADDRESSES: For service information identified in this final rule, contact Rolls-Royce, Deutschland Ltd. & Co. KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; email: *https://www.rolls-royce.com/contact-us.aspx.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0538.

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–2018–0538; 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 AD, the mandatory continuing airworthiness information (MCAI), regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7236; fax: 781–238–7199; email: *Stephen.L.Elwin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2017–03–02, Amendment 39–18793 (82 FR 10701, February 15, 2017), (''AD 2017–03–02''). AD 2017–03–02 applied to Rolls-Royce, Deutschland Ltd. & Co. KG (formerly Rolls-Royce plc) RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines, with LP compressor blade, part number (P/N) FK23411, FK25441, FK25968, FW11901, FW15393, FW23643, FW23741, FW23744, KH23403, or KH23404, installed. The SNPRM published in the **Federal Register** on November 15, 2019 (84 FR 62482). The FAA preceded the SNPRM with an NPRM that published in the **Federal Register** on August 14, 2018 (83 FR 40161). The NPRM proposed to continue to require initial and repetitive UIs of the affected LP compressor blades at a reduced interval. The SNPRM proposed to require initial and repetitive UIs of the affected LP compressor blade and replacement of the LP compressor blade with a part eligible for installation if the LP compressor blade fails a UI. The FAA is issuing this AD to address the unsafe condition on these products.

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2018–0188R1, dated September 5, 2018 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

Occurrences have been reported of LP compressor partial aerofoil blade release events on RR Trent 700 engines. While primary containment of the released sections was achieved in each case, some of the releases did exhibit secondary effects that are considered to present a potential hazard.

This condition, if not detected and corrected, could lead to LP compressor blade release with possible consequent loss of the engine nose cowl, under cowl fires and forward projection of secondary debris, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.

To address this potential unsafe condition, RR published NMSB RB.211–72–G872, providing inspection instructions and, consequently, EASA issued AD 2012–0247 to require a one-time inspection of the higher life LP compressor blades. After identification of a population of these LP compressor blades that were incorrectly inspected, RR issued NMSB RB.211–72–H311 and, consequently, EASA issued AD 2013–0060, retaining the requirements of EASA AD 2012–0247, which was superseded, to require a one-time re-inspection of the affected blades.

After that AD was issued, to mitigate the risk of further partial LP compressor blade release events, RR issued NMSB RB.211–72–AH465, providing instructions for ultrasonic inspection of the affected parts to detect sub-surface anomalies in the aerofoil. Consequently, EASA issued AD 2014–0031, superseding [EASA] AD 2013–0060, to require repetitive inspections of all affected LP compressor blades and, depending on findings, replacement.

Thereafter, EASA issued AD 2016–0141, retaining the requirements of [EASA] AD 2014–0031, which was superseded, to reduce inspection threshold (RR Alert NMSB RB.211–72–AH465 Revision 2). Prompted by further analysis, EASA issued AD 2017–0241, retaining the requirements of EASA AD 2016–0141, which was superseded, further reducing the inspection threshold and interval (RR Alert NMSB RB.211–72–AH465 Revision 4).

Since EASA AD 2017–0241 was issued, RR issued the NMSB to distinguish between standard operations and NSO and to determine the applicable inspection threshold and interval. The flight cycles (FC) accumulated by operators conducting NSO have to be calculated using the beta factor shown in Table of the NMSB. The NMSB also introduces, for engines that have accumulated more than 600 FC or standard duty cycles (SDC, for engines used in NSO), a closing date by which these have to be inspected at least once.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2017–0241, which is superseded, and requires implementation of the changes introduced.

You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0538.

Comments

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

Request To Update Service Information

Rolls-Royce plc (RR), American Airlines (American), and Delta Air Lines (Delta) requested that RR Alert Non-Modification Service Bulletin (NMSB) RB.211–72–AH465, Revision 6, dated November 29, 2019 (''the NMSB''), be referenced in this AD instead of Revision 5 of the NMSB. Delta and American commented Revision 6 offers an optional water-coupled phased array inspection that provides a more reliable and repeatable technique and increases detection sensitivity to identify smaller defects. RR further commented that Revision 6 has been approved by the European Aviation Safety Agency.

The FAA agrees. RR published Revision 6 of the NMSB to allow an alternative water-coupled phased array inspection. Operators may still use the C-scan and gel-coupled phased array inspection techniques as specified in Revision 6, or earlier versions, of the NMSB.

Request To Allow Use of Later Versions of Service Information

Delta requested that this AD allow the use of later approved revisions of RR Alert NMSB RB.211–72–AH465. Delta indicated that this is something that has been achieved before in other FAA ADs when an FAA AD incorporates by reference the EASA AD.

The FAA disagrees. As set forth in Title 1 of the Code of Federal Regulations, Section 51.1(f), incorporation by reference of a publication is limited to the edition of the publication that is approved. Future amendments or revisions of the publication are not included. Further, this AD does not incorporate by reference the EASA AD.

Support for the AD

The Air Line Pilots Association commented that it supports the AD as proposed.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the change described previously.

Related Service Information Under 1 CFR Part 51

The FAA reviewed RR Alert NMSB RB.211–72–AH465, Revision 6, dated November 29, 2019. The NMSB describes procedures for performing a UI of the LP compressor blades. 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.

Costs of Compliance

The FAA estimates that this AD affects 56 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect LP compressor blade	44 work-hours × $85 per hour = $3,740	$0	$3,740	$209,440

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The FAA has no way of determining the number of engines that might need this replacement.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace LP compressor blade (one blade per 77 engine sets).	6 work-hours × $85 per hour = $510	$103,000	$103,510

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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) 2017–03–02, Amendment 39–18793 (82 FR 10701, February 15, 2017), and adding the following new AD:

2020–06–16 Rolls-Royce, Deutschland Ltd. & Co. KG (formerly Rolls-Royce plc): Amendment 39–19885; Docket No. FAA–2018–0538; Product Identifier 2012–NE–47–AD.

(a) Effective Date

This AD is effective May 5, 2020.

(b) Affected ADs

This AD replaces AD 2017–03–02, Amendment 39–18793 (82 FR 10701, February 15, 2017).

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd. & Co. KG (formerly Rolls-Royce plc) RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines, with low-pressure (LP) compressor blade, part number (P/N) FK23411, FK25441, FK25968, FW11901, FW15393, FW23643, FW23741, FW23744, KH23403, or KH23404, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by LP compressor blade partial airfoil release events. While released sections were contained in each case, projection of secondary debris and effects could present a potential hazard. The FAA is issuing this AD to prevent LP compressor blade airfoil separation. The unsafe condition, if not addressed, could result in damage to the engine and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within the compliance time specified in Figure 1 to paragraph (g)(1) of this AD and thereafter, at intervals not to exceed 1,200 flight cycles (FCs) or Standard Duty Cycles (SDCs) for Non-Standard Operations (NSO), as applicable, since the last ultrasonic inspection (UI), perform a UI of each affected LP compressor blade in accordance with the Accomplishment Instructions, paragraph 3, of Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) RB.211–72–AH465, Revision 6, dated November 29, 2019.

Note 1 to paragraph (g)(1): Paragraph 1.D of RR Alert NMSB RB.211–72–AH465, Revision 6, dated November 29, 2019, describes how to determine the applicable SDCs. The Time Limits Manual (TLM), 05–00–01, defines NSO.

Figure 1 to paragraph (g)(1) – Inspection Threshold

FCs/SDC Accumulated Since New or Since Last Inspection Required by paragraph (g)(1)	Compliance Times
Less than 1,100 FCs/SDCs	Before exceeding 1,200 FCs/SDCs since new.
1,100 FCs/SDCs or greater	Within 100 FCs/SDCs after the effective date of this AD, or before exceeding 2,400 FCs/SDCs since new, whichever occurs first.

(2) If, during any inspection required by paragraph (g)(1) of this AD, a LP compressor blade is rejected by the UI, as defined in Accomplishment Instructions, paragraph 3, of RR Alert NMSB RB.211–72–AH465, Revision 6, dated November 29, 2019, before further flight, or before returning the LP compressor blade to service, whichever occurs first, remove the affected LP compressor blade from service and replace with a part eligible for installation.

(h) Installation Prohibition

After the effective date of this AD, do not install an affected LP compressor blade on an engine unless the LP compressor blade meets the conditions specified in paragraphs (h)(1) or (2) of this AD, as applicable.

(1) The affected part has not exceeded 1,200 FC or SDCs (for NSO) since new, or since an inspection performed in accordance with either RR Alert NMSB RB.211–72–AH465, Revision 6, dated, November 29, 2019, or with any of the service information referenced in paragraph (j)(1) and (2) of this AD.

(2) Prior to installation, the affected part has passed an ultrasonic inspection in accordance with paragraph (g)(1) of this AD.

(i) No Reporting Requirement

The reporting requirements in the Accomplishment Instructions, paragraph 3 of RR Alert NMSB RB.211–72–AH465, Revision 6, dated November 29, 2019, are not required by this AD.

(j) Credit for Previous Actions

You may take credit for LP compressor blade UIs required by paragraph (g)(1) of this AD, if you performed the UI before the effective date of this AD using:

(1) For initial inspections: RR NMSB RB.211–72–G702, dated May 23, 2011; RR NMSB RB.211–72–G872, Revision 2, dated March 8, 2013, or earlier versions; RR NMSB RB.211–72–H311, dated March 8, 2013; RR NMSB RB.211–72–AH465, Revision 5, dated July 26, 2018, or earlier versions; RR Engine Manual E-Trent-1RR, Task 72–31–11–200–806; or Airbus A330 Aircraft Maintenance Manual (AMM) Task 72–31–41–270–801, or AMM Task 72–31–41–270–802.

(2) For repetitive inspections: The instructions referenced in the mandatory inspection paragraph of the applicable engine TLM, provided the compliance times of this AD are not exceeded.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (l)(1) of this AD. You may email your request to: *ANE–AD–AMOC@faa.gov.*

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

(l) Related Information

(1) For more information about this AD, contact Stephen Elwin, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7236; fax: 781–238–7199; email: *Stephen.L.Elwin@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2018–0188R1, dated September 5, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2018–0538.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin RB.211–72–AH465, Revision 6, dated November 29, 2019.

(ii) [Reserved]

(3) For RR service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 708 6 0; email: *https://www.rolls-royce.com/contact-us.aspx.*

(4) You may view this service information at FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781–238–7759.

(5) You may view this service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fedreg.legal@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on March 26, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–06640 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0299; Project Identifier AD–2020–00247–E; Amendment 39–21106; AD 2020–07–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Pratt & Whitney (PW) PW1519G, PW1521G, PW1521G–3, PW1521GA, PW1524G, PW1524G–3, PW1525G, and PW1525G–3 model turbofan engines. This AD requires the removal from service of certain electronic engine control (EEC) full authority digital electronic control (FADEC) software and the installation of a software version eligible for installation. This AD was prompted by reports of four in-flight shutdowns (IFSDs) due to failure of the low-pressure compressor (LPC) rotor 1 (R1) and by subsequent findings of cracked LPC R1s during inspections. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 15, 2020.

The FAA must receive comments on this AD by May 15, 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 service information identified in this final rule, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06118; phone: 800–565–0140; fax: 860–565–5442; email: *help24@pw.utc.com;* internet: *https://fleetcare.pw.utc.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0299; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for the Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received reports of four instances of IFSDs occurring on the affected model turbofan engines since 2019.

In response to the two IFSDs that occurred in July and September 2019, and in response to on-going investigations of these IFSDs, the FAA issued AD 2019–19–11 (84 FR 50719, September 26, 2019), to perform inspections of the LPC R1 to prevent failures. The FAA subsequently superseded AD 2019–19–11, issuing AD 2019–21–11 (84 FR 57813, October 29, 2019) in response to another IFSD and to expand the population of affected engines that needed inspection of the LPC R1. Since the effective date of AD 2019–21–11, another IFSD occurred in February 2020. Analysis by the manufacturer determined that the LPC vane schedules were putting the engine in a condition to experience an acoustic resonance that damages the LPC R1, which then leads to LPC R1 failure. In response, the manufacturer updated the EEC FADEC software to improve vane scheduling to avoid acoustic resonance.

This condition, if not addressed, could result in uncontained release of the LPC R1, damage to the engine, and damage to the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information

The FAA reviewed PW Service Bulletin (SB) PW1000G–A–73–00–0036–00A–930A–D, Issue No. 002, dated March 4, 2020, and PW SB PW1000G–A–73–00–0041–00A–930A–D, Issue No.001, dated March 4, 2020. These SBs describe procedures for replacing or modifying the EEC FADEC software.

FAA's Determination

The FAA is issuing this AD because it evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires the removal from service of certain EEC FADEC software and the installation of a software version eligible for installation.

Interim Action

The FAA considers this AD interim action. The root cause of the LPC R1 failures is still being investigated and the FAA will consider further rulemaking depending on the results of the investigation.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. Similarly, Section 553(d) of the APA authorizes agencies to make rules effective in less than 30 days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule. In addition to three failures of the LPC R1 installed on PW1500G model turbofan engines occurring in 2019, an additional failure of the LPC R1 occurred on February 12, 2020. LPC rotor failures can release high-energy debris from the engine and damage the airplane (see AC 39–8, ''Continued Airworthiness Assessments of Powerplant and Auxiliary Power Unit Installations of Transport Category Airplanes,'' dated September 8, 2003).

The failures of the LPC R1 occurred on engines that were shipped to operators as spare engines and were not delivered installed on aircraft. The failures occurred within 300 flight cycles (FCs) since installation of the engine onto an aircraft. The manufacturer has recommended that the new engine software be loaded into the engine as soon as the engines are installed on an aircraft or within 15 FCs after installation if the engine was installed onto an aircraft recently. These engines are the highest risk for LPC R1 failures. The remainder of the fleet is also at risk for LPC R1 failures and needs to have the software upgraded within 90 days to prevent additional LPC R1 failures and maintain an acceptable level of safety.

The FAA considers these LPC R1 failures to be an urgent safety issue, requiring immediate action involving replacement of the EEC FADEC software. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the reasons stated above, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2020–0299 and Project Identifier AD–2020–00247–E at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about this AD.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 58 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace EEC software	2 work-hours × $85 per hour = $170	$0	$170	$9,860

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

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–07–02 Pratt & Whitney: Amendment 39–21106; Docket No. FAA–2020–0299; Project Identifier AD–2020–00247–E.

(a) Effective Date

This AD is effective April 15, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney PW1519G, PW1521G, PW1521G–3, PW1521GA, PW1524G, PW1524G–3, PW1525G, and PW1525G–3 model turbofan engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by reports of in-flight shutdowns due to failure of the low-pressure compressor (LPC) rotor 1 (R1) and by subsequent findings of cracked LPC R1s during inspections. The FAA is issuing this AD to prevent failure of the LPC R1. The unsafe condition, if not addressed, could result in uncontained release of the LPC R1, damage to the engine, damage to the airplane, and loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Remove the electronic engine control (EEC) software if the version is earlier than full authority digital electronic control (FADEC) software version V2.11.9.2 and install EEC FADEC software that is eligible for installation, as follows:

(i) For engines that have accumulated less than 300 flight cycles (FCs) since new or since the last engine shop visit, within 15 FCs after the effective date of this AD.

(ii) For all other engines, within 90 days after the effective date of this AD.

(2) After the effective date of this AD, do not install an engine listed in paragraph (c) of this AD on any aircraft unless you have replaced the EEC software required by paragraph (g)(1) of this AD.

Note to paragraph (g) of this AD: The engines identified in paragraphs (g)(1)(i) and (2) of this AD include engines originally delivered to operators as spare engines that have been subsequently installed on an airplane.

(h) Definitions

(1) For the purpose of this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine case flanges, except separation of engine flanges solely for the purposes of transportation of the engine without subsequent maintenance does not constitute an engine shop visit.

(2) For the purpose of this AD, ''EEC FADEC software that is eligible for installation'' is EEC FADEC software version V2.11.9.2 or later.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on March 25, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–06554 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0972; Airspace Docket No. 19–ANM–30]

RIN 2120–AA66

Establishment of Class E Airspace; Mountain Home, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Mountain Home Municipal Airport, Mountain Home, ID. Two areas extending upward form 700 feet or more above the surface are being established. The first area extends upward from 700 feet above the surface. The second area extends upward from 1,200 feet above the surface. These areas, to the extent possible, contain arriving and departing IFR aircraft operating to/from the airport.

DATES: Effective 0901 UTC, July 16, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 2328; January 15, 2020) for Docket No. FAA–2019–0972 to establish Class E airspace at Mountain Home Municipal Airport, Mountain Home, ID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet or more above the surface at Mountain Home Municipal Airport, Mountain Home, ID. The new airspace will support a new RNAV procedure as well as currently published IFR arrival and departure procedures for the airport.

The first area extends upward from 700 feet above the surface and, to the extent possible, will contain IFR departures until reaching 1,200 feet above the surface and IFR arrivals descending below 1,500 feet above the surface. This airspace area is described as follows: That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the airport, and within 2 miles each side of the 300° bearing from the airport, extending from the 5.5-mile radius to 8 miles northwest of the Mountain Home Municipal Airport, excluding that airspace within Mountain Home Air Force Base's Class D and Class E2 surface areas.

The second area is designed to contain IFR aircraft transitioning to/from the en route environment. This area is described as follows: That airspace extending upward from 1,200 feet above the surface within a 20-mile radius of the Mountain Home Municipal Airport.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM ID E5 Mountain Home, ID [New]

Mountain Home Municipal Airport, ID
(Lat. 43°07′54″ N, long. 115°43′50″ W)

That airspace extending upward from 700 feet above the surface within a 5.5-mile radius of the airport, and within 2 miles each side of the 300° bearing from the airport, extending from the 5.5-mile radius to 8 miles northwest of the airport, excluding that airspace within Mountain Home AFB's Class D and Class E2 airspace areas; and that airspace extending upward from 1,200 feet above the surface within a 20-mile radius of the Mountain Home Municipal Airport.

Issued in Seattle, Washington, on March 25, 2020.

Shawn M. Kozica,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–06661 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

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

RIN 2120–AA66

Amendment of Class E Airspace; Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace by adding a designated

surface area at Bend Municipal Airport, Bend, OR. This airspace area is designed to enhance safety at the airport by providing controlled airspace to the surface.

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

Additionally, this action amends the airspace area extending upward from 700 feet or more above the surface. Amendments to this airspace area are designed to properly contain arriving and departing IFR aircraft.

DATES: Effective 0901 UTC, July 16, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 2327; January 15, 2020) for Docket No. FAA–2019–0887 to amend Class E airspace at Bend Municipal Airport, Bend, OR. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Three comments were received.

One comment discussed the requirement for ATC to have a communications capability, to the runway, with aircraft that normally operate within the surface area. Seattle Air Route Traffic Control Center confirmed this capability in August of 2019.

Two comments in favor of the airspace amendments we submitted.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace by adding an area, designated as a surface area, at Bend Municipal Airport, Bend, OR. The area is described as follows: That airspace extending upward from the surface within a 3.9-mile radius of the airport excluding that airspace within 1 mile of a point in space located at latitude 44°02′51″ N longitude 121°16′30″ W.

This action also amends the Class E airspace by adding an area designated as an extension to a Class D or Class E surface area. The area properly contains IFR arrivals descending below 1,000 feet above the surface of the earth and is described as follow: That airspace extending upward from the surface within 1 mile each side of the 167° bearing from the airport, extending from the 3.9-mile radius to 6.8 miles south of the Bend Municipal Airport.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ANM OR E2 Bend, OR (NEW)

Bend Municipal Airport, OR
(Lat. 44°05′40″ N, long. 121°12′01″ W)

That airspace extending upward from the surface within a 3.9-mile radius of the Bend Municipal Airport, excluding that airspace within 1 mile of a point in space at lat. 44°02′51″ N, Long. 121°16′30″ W.

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

* * * * *

ANM OR E4 Bend, OR (NEW)

Bend Municipal Airport, OR
(Lat. 44°05′40″ N, long. 121°12′01″ W)

That airspace extending upward from the surface within 1 mile each side of the 167° bearing from the airport, extending from the 3.9-mile radius to 6.8 miles south of the Bend Municipal Airport.

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

* * * * *

ANM OR E5 Bend, OR (AMENDED)

Bend Municipal Airport, OR
(Lat. 44°05′40″ N, long. 121°12′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the airport, and within 1.1 miles each side of the 167° bearing from the airport, extending from 6.4-mile radius to 8.8 miles south of the airport, and within 3.8 miles each side of the 338° bearing from the airport, extending from the 6.4-mile radius to 8.4 miles north of the Bend Municipal Airport.

Issued in Seattle, Washington, on March 25, 2020.

Shawn M. Kozica,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2020–06664 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 227, 230, and 232

[Release No. 33–10768; 34–88492; 39–2531; IC–33832]

Relief for Form ID Filers and Regulation Crowdfunding and Regulation A Issuers Related to Coronavirus Disease 2019 (COVID–19)

AGENCY: Securities and Exchange Commission.

ACTION: Temporary final rule.

SUMMARY: We are adopting temporary final rules for Form ID filers and for issuers subject to reporting obligations pursuant to Regulation Crowdfunding and Regulation A in order to address the needs of companies directly or indirectly affected by coronavirus disease 2019 (COVID–19). The temporary final rules provide temporary relief from the Form ID notarization process for certain filers and extend the filing deadlines for specified reports and forms due pursuant to Regulation Crowdfunding and Regulation A for certain issuers.

DATES: The amendment to 17 CFR 232.10 is effective from March 30, 2020 through September 30, 2020. The amendments to 17 CFR 227.202 and 17 CFR 230.257 are effective from March 30, 2020 through July 15, 2020.

FOR FURTHER INFORMATION CONTACT: Rosemary Filou, Chief Counsel and Acting Deputy Director of the EDGAR Business Office, at (202) 551–8900; or Charlie Guidry, Special Counsel, Office of Small Business Policy, Division of Corporation Finance, at (202) 551–3460; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to 17 CFR 232.10 (''Rule 10'') of Regulation S–T,[1] 17 CFR 227.202 (''Rule 202'') of Regulation Crowdfunding[2] under the Securities Act of 1933 (the ''Securities Act''),[3] and 17 CFR 230.257 (''Rule 257'') of Regulation A[4] as temporary final rules.

I. Introduction

The current outbreak of coronavirus disease 2019 (COVID–19) may present challenges to entities and their representatives in timely meeting certain of their obligations under the federal securities laws. In light of this, we are adopting these temporary final rules to address the needs of parties seeking to file a Form ID to gain access to the Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system and companies directly or indirectly affected by COVID–19 that are subject to reporting obligations pursuant to Regulation Crowdfunding or Regulation A.

Section 36 of the Exchange Act of 1934[5] (the ''Exchange Act'') and Section 28 of the Securities Act[6] provide the Commission with general exemptive authority to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act and the Securities Act, respectively, or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Section 6(c) of the Investment Company Act of 1940[7] (the ''Investment Company Act'') provides that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Investment Company Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act. Section 304(d) of the Trust Indenture Act of 1939[8] (the ''Trust Indenture Act'') authorizes the Commission to adopt rules to exempt securities or transactions from the provisions of the Trust Indenture Act to the extent that ''such exemption is necessary or appropriate in the public interest and consistent with the protection of

[1] 17 CFR part 232.

[2] 17 CFR part 227.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 230.251 through 230.263.

[5] 15 U.S.C. 78a *et seq.*

[6] 15 U.S.C. 77z–3.

[7] 15 U.S.C. 80a *et seq.*

[8] 15 U.S.C. 77aaa *et seq.*

investors and the purposes fairly intended by'' the Trust Indenture Act.

II. Temporary Relief From Form ID Notarization Requirement

In order to use the Commission's EDGAR system to make filings, an applicant must complete online the Form ID[9] application, and, in accord with Rule 10 of Regulation S–T, ''file, by uploading as a Portable Document Format (PDF) attachment to the Form ID filing, a notarized document, manually signed by the applicant over the applicant's typed signature, that includes the information required to be included in the Form ID filing and confirms the authenticity of the Form ID filing.''[10]

A number of filers have indicated that they are having difficulty securing the required notarization to gain access to EDGAR because their employees are teleworking or are otherwise no longer in reasonable proximity of an authorized notary public due to circumstances relating to COVID–19. They have expressed a need for temporary relief from this notarization requirement so that they can make their required filings in a timely manner.

We believe it is in the public interest and consistent with investor protection to provide temporary relief from the Form ID notarization process where circumstances related to COVID–19 render it impracticable or impossible to obtain a notarization in a timely fashion. Consequently we are adopting as a temporary final rule a new paragraph (c) to Rule 10 of Regulation S–T that will allow filers to gain access to the EDGAR system on a temporary basis without initially providing the required notarization to the manually signed document.

From March 26, 2020 through July 1, 2020, temporary paragraph (c) allows the staff to create EDGAR accounts and issue EDGAR access codes based on a manually signed document without the requisite notarization, provided that the filer indicates on the face of the signed document that it could not obtain the required notarization due to circumstances relating to COVID–19. Filers seeking access to EDGAR in reliance on the temporary final rule may be asked to provide documents, on a supplemental basis, to support their application to assist the staff in validating the request. Once the codes are issued, the filer may commence filing. The filer is required to submit as correspondence via EDGAR a PDF copy of the notarized manually signed document within 90 days of the issuance of the codes under this temporary provision. If it does not do so within the stated timeframe, the Commission staff may inactivate the filer's EDGAR access codes. In order to provide an additional tool to counteract potential abuse, we also are authorizing the staff to inactivate codes issued pursuant to this temporary rule when the staff has reason to believe that a filer who gained access under the temporary final rule has made illegitimate filings that are inconsistent with the protection of investors. In exercising such authority, the staff may request additional information or documentation from the filer.

III. Temporary Relief From Filing Requirements for Issuers Subject to the Reporting Obligations of Regulation Crowdfunding or Regulation A

Disruptions as a result of COVID–19 could hamper the efforts of companies and other persons with filing obligations to meet their filing deadlines under Regulation Crowdfunding or Regulation A. At the same time, investors have an interest in the timely availability of required information about these companies. While the Commission believes that the temporary relief from filing requirements provided by the amendments to Rule 202 of Regulation Crowdfunding[11] and Rule 257 of Regulation A[12] is both necessary in the public interest and consistent with the protection of investors, we remind companies that are the subject of the relief provided in these temporary final rules to continue to evaluate their obligations to make materially accurate and complete disclosures in accordance with the anti-fraud provisions of the federal securities laws. For example, an issuer relying on the temporary final rules that is conducting a continuous Regulation A offering is responsible for ensuring that the offering materials contain the information required to be included therein. If the issuer is satisfied that the offering materials still contain the material information required to be included therein, it should nevertheless disclose that it is relying on this relief.

Pursuant to Section 28 of the Securities Act, we are adopting temporary final rules providing that an issuer subject to the reporting requirements of either Regulation Crowdfunding or Regulation A is exempt from any requirement to file specified reports or forms with the Commission, and would be considered current in its reporting obligations under Regulation Crowdfunding or Regulation A, where the conditions below are satisfied:

- The issuer is not able to meet a filing deadline due to circumstances related to COVID–19;
- The issuer promptly discloses on its public website or, for Regulation Crowdfunding issuers, through an intermediary's platform, or provides direct notification to its investors, that it is relying on the temporary final rules;
- The issuer files with the Commission, no later than 45 days after the original filing deadline of the report or form, the report or form required to be filed pursuant to either Regulation Crowdfunding or Regulation A during the period from and including March 26, 2020 to May 31, 2020; and
- In any such report or form, the issuer discloses that it is relying on the temporary final rules and states the reasons why, in good faith, it could not file such report or form on a timely basis.

For Regulation Crowdfunding, the relief applies to annual reports on Form C–AR, progress updates on Form C–U, and termination of reporting on Form C–TR.[13] For Regulation A, the relief applies to post-qualification amendments required at least every 12 months after the qualification date to include updated financial statements, annual reports on Form 1–K, semi-annual reports on Form 1–SA, special financial reports on Forms 1–K or 1–SA, current reports on Form 1–U, and exit reports on Form 1–Z.[14]

The Commission intends to monitor the current situation and may, if necessary, extend the time period during which this relief applies, with any additional conditions the Commission deems appropriate and/or issue other relief.

[9] 17 CFR 239.63; 17 CFR 249.446; 17 CFR 269.7; and 17 CFR 274.402.

[10] 17 CFR 232.10(b). The requirement to upload a notarized signed Form ID is also specified in the EDGAR Filer Manual, incorporated into Regulation S–T at 17 CFR 232.301 (''Rule 301''). All references to notarized signatures in Volume I of the EDGAR Filer Manual and the EDGAR Filer Management site (Form ID) should be interpreted consistently with temporary paragraph (c) during the period in which the temporary final rule is in effect.

[11] *See* Rule 202(c) of Regulation Crowdfunding. 17 CFR 227.202(c).

[12] *See* Rule 257(f) of Regulation A. 17 CFR 230.257(f).

[13] This relief does not apply to Form C or Form C/A.

[14] This relief does not apply to a Form 1–A that has not been qualified.

IV. Economic Analysis

A. Temporary Relief From Form ID Notarization Requirement

The Commission is temporarily providing Form ID filers affected by COVID–19 with a 90-day deferral of the requirement to upload a PDF attachment to the electronic Form ID filing with a copy of a notarized document, manually signed by the applicant over the applicant's typed signature, that includes the information required to be included in the Form ID filing. Under current filing requirements, the notarized signature is intended to confirm the authenticity of the identity of the Form ID filer. During calendar year 2019, we estimate that 34,512 Form ID filings were accepted by EDGAR.

The deferral of the requirement to provide a notarized copy is expected to benefit affected Form ID filers that newly require EDGAR access for electronic filings, particularly natural persons and small business filers, and that cannot secure the required notarization due to circumstances relating to COVID–19 (*e.g.,* because their employees are teleworking or are otherwise no longer in reasonable proximity of an authorized notary public). In the absence of the amendments, such filers might incur high additional costs to obtain the required notarization from a notary public in order to receive EDGAR access expediently or may not be able to receive EDGAR access on a timely basis to satisfy filing requirements. By providing affected filers with a way to access EDGAR expediently, the amendments would increase timeliness in the availability of such filers' electronic filings and disclosures, which may also benefit investors in affected filers that rely on the information in the electronic filings.[15]

To the extent that the amendments marginally increase the risk of an applicant that is not the claimed filer gaining access to the EDGAR system and using that access in an improper way (such as making misleading filings), investors may experience costs as a result of relying on such filings. We expect several factors and provisions of the temporary final rules to mitigate these costs. First, the amendment requires filers to submit a notarized copy within 90 days rather than waiving the requirement altogether. This provision is expected to benefit investors by reducing the likelihood that an applicant that is not the claimed EDGAR filer that avails itself of relief from the notarization-based authentication requirement retains indefinite access to the EDGAR system. Second, we are authorizing the staff to inactivate codes issued pursuant to this temporary rule where the staff has reason to believe that such action is necessary for the protection of investors, which may further reduce the risk of a new applicant gaining access to the EDGAR system and using that access in an improper way. In exercising such authority, the staff may request additional information or documentation from the filer in order to determine whether continued use of the codes is consistent with the protection of investors. Third, irrespective of the manner in which EDGAR access is obtained, anti-fraud liability under federal securities laws would continue to apply and may serve to mitigate potential risk to investors.

Overall, we expect this temporary amendment to have modest economic effects, including modest effects on efficiency, competition, and capital formation. We expect the proposed amendments to marginally increase efficiency for new filers seeking EDGAR access and facing disruptions in access to the services of a notary public. To the extent that small filers may face relatively greater hurdles, these amendments may have a marginally positive effect on competition and facilitate such filers' access to capital that may require an electronic filing.

We have considered reasonable alternatives to this amendment. As an alternative, we could have temporarily waived rather than deferred the notarization requirement for Form ID. The benefits of such an alternative compared to the final rule would be additional cost savings for affected filers. The cost of such an alternative compared to the final rule would be a potentially greater risk to investors in the case of a bad actor obtaining access to EDGAR and using that access in an improper way. As another alternative, we considered a different time-frame for the temporary deferral of the notarization requirement for Form ID filers than 90 days. Compared to the final rule, a shorter (longer) deferral would result in less (more) flexibility for filers affected by COVID–19 seeking to access the EDGAR system and unable to meet the notarization requirement without incurring significant costs while at the same time lower (greater) marginal risk of continued EDGAR access by an applicant other than the claimed filer.

B. Temporary Relief From Filing Requirements for Issuers Subject to the Reporting Obligations of Regulation Crowdfunding and Regulation A

Regulation Crowdfunding and Regulation A permit offers and sales of securities without registration under the Securities Act, subject to certain limitations and conditions, including compliance with ongoing reporting requirements. Based on staff analysis, between June 19, 2015[16] and December 31, 2019, we estimate that 382 Regulation A offering statements were qualified by the Commission, excluding withdrawn offerings. We estimate that 2,003 Regulation Crowdfunding offerings were filed on Form C between May 16, 2016 and December 31, 2019, excluding withdrawn offerings.[17]

We lack the data to estimate the number of investors in Regulation A or Regulation Crowdfunding offerings that could be affected if issuers rely on the relief provided by the temporary final rules, because information on the number of investors is generally not required to be disclosed in periodic or current reports required under Regulation A or in periodic reports or progress updates required under Regulation Crowdfunding.[18]

We are mindful of the costs and benefits of the temporary final rules.[19] We believe the temporary final rules will benefit issuers that have an obligation to file specified reports with the Commission pursuant to either Regulation Crowdfunding or Regulation A and have been adversely affected by COVID–19 by permitting them to take additional time to meet their reporting obligations. We expect the relief provided by the temporary final rules will benefit issuers that, absent the

[15] Under these temporary final rules and other filer relief provided by the Commission (*see* Order Under Section 36 of the Securities Exchange Act of 1934 Modifying Exemptions from the Reporting and Proxy Delivery Requirements for Public Companies, Release No. 34–88465 (March 25, 2020)), some filers affected by COVID–19 are provided an extension of the deadline to make certain required periodic filings. However, such relief does not extend, for example, to filings of beneficial ownership disclosures or filings of Form D.

[16] June 19, 2015 was the effective date of certain amendments to Regulation A. *See* Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A), Rel. Nos. 33–9741; 34–74578; 39–2501 (Mar. 25, 2015) [80 FR 21806 (Apr. 20, 2015)].

[17] These figures overstate the number of issuers with obligations to file annual reports under Regulation Crowdfunding, because they do not exclude issuers that have failed to raise the target amount or have exited the reporting regime.

[18] Regulation A issuers that file Form 1–Z to suspend reporting are required to disclose the number of shareholders of record.

[19] Section 2(b) of the Securities Act [15 U.S.C. 77b(b)] requires 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.

relief, would not be able to avail themselves of the exemption from registration under Regulation Crowdfunding or Regulation A because the timely filing of required reports is a condition to the exemptions. In the absence of this relief, issuers could incur prohibitively high costs in an attempt to meet filing deadlines given the disruptions as a result of COVID–19.

The requirements for an issuer to promptly disclose that it is relying on Rule 202(c) of Regulation Crowdfunding or Rule 257(f) of Regulation A and to disclose in the subsequently filed report that it relied on such rule and state the reasons why, in good faith, it could not file a report or form on a timely basis may impose minimal additional costs on issuers availing themselves of this relief. However, we believe that these minimal costs are justified in light of the significant negative implications of not being able to rely on the exemption, the prohibitively high costs an issuer may incur in attempting to file in a timely manner, and the value to investors of the information about the issuer's reporting status and reasons for not filing a timely report.

We also acknowledge that there may be costs imposed on investors, intermediaries, and other market participants due to delayed access to information about offerings conducted in reliance on Regulation A and Regulation Crowdfunding. Generally, reporting requirements strengthen investor protection and decrease the extent of information asymmetries between issuers and investors. Ongoing reporting provides investors with periodically updated information, allowing them to assess investment opportunities based on the information provided and their level of risk tolerance, resulting in better informed investment decisions and improved allocative efficiency. Given that the temporary final rules allow for delayed reporting for a limited time period and only under specified conditions, we do not believe such costs will be significant.

The temporary final rules will not substantially affect competition or capital formation. We acknowledge the possibility that the temporary final rules may have a minor impact on efficiency. On the one hand, as noted above, the delay in reporting could marginally affect allocative efficiency to the extent that it allows information asymmetries between investors and issuers to persist for the length of time of the delay. On the other hand, we expect efficiency gains to the extent that the temporary final rules allow issuers to continue to rely on either of the exemptions from registration that would not be available if one of the required reports that is a condition to the exemptions was not filed in a timely manner, or to the extent the issuers are able to avoid paying a premium to service providers in an attempt to file in a timely manner by delaying reporting during the specified relief period.

As an alternative to the relief specified in the temporary final rules, we could have considered a longer or shorter relief period. While a shorter period would have reduced the costs to investors of asymmetric information, it would also reduce the benefits of the temporary final rules to issuers. Similarly, a longer period would increase the costs to investors. We believe that the delay provided by the temporary final rules is appropriate given the potential impact COVID–19 could have on the efforts of companies to meet filing deadlines pursuant to Regulation Crowdfunding and Regulation A. As another alternative, we could have provided the specified relief but not required issuers to provide disclosure about reliance on the relief, or only required issuers to do so in cases of ongoing offerings. While these alternatives could have lowered issuer costs compared to the temporary final rules, the cost savings would likely be modest given the limited nature of the notice and the flexibility afforded to issuers with regard to how to provide disclosure. Further, under these alternatives, investors, including investors in securities issued in a past offering (particularly, in cases of traded Regulation A securities), would not have the benefit of timely information about an issuer's reliance on the temporary final rules.

IV. Procedural and Other Matters

The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a rulemaking in the **Federal Register** and provide an opportunity for public comment. This requirement does not apply, however, if the agency ''for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.'' [20] The APA also generally requires that an agency publish an adopted rule in the **Federal Register** at least 30 days before it becomes effective. This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.[21]

Given the temporary nature of the relief contemplated by the temporary final rules and the significant and immediate impact of COVID–19 on affected issuers, as discussed above, the Commission finds that good cause exists to dispense with notice and comment as impracticable and unnecessary, and to act immediately to amend Rule 10 of Regulation S–T, Rule 202 of Regulation Crowdfunding, and Rule 257 of Regulation A.[22] Further, the temporary final rules will not materially affect the burden or cost estimates associated with existing collections of information for Form ID or under Regulation Crowdfunding and Regulation A for purposes of the Paperwork Reduction Act of 1995.[23]

Pursuant to the Congressional Review Act,[24] the Office of Information and Regulatory Affairs has designated these amendments as not ''a major rule,'' as defined by 5 U.S.C. 804(2).

V. Statutory Basis

We are adopting amendments to Rule 202 of Regulation Crowdfunding and Rule 257 of Regulation A under the authority set forth in the Securities Act (15 U.S.C. 77a *et seq.*), particularly, Section 28 thereof. We are adopting the amendment to Regulation S–T under the authority in Sections 6, 7, 8, 10, 19(a), and 28 of the Securities Act; Sections 3, 12, 13, 14, 15, 15B, 23, 35A, and 36 of the Exchange Act; Sections 304(d) and 319 of the Trust Indenture Act; and Sections 6(c), 8, 30, 31, and 38 of the Investment Company Act.

List of Subjects

17 CFR Part 227

Crowdfunding, Funding portals, Intermediaries, Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

[20] 5 U.S.C. 553(b)(3)(B).

[21] 5 U.S.C. 553(d)(3).

[22] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the temporary final rules to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the federal agency promulgating the rule determines). The temporary final rules also do not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

[23] 44 U.S.C. 3501 *et seq.*

[24] 5 U.S.C. 801 *et seq.*

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 227—REGULATION CROWDFUNDING, GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 227 continues to read as follows:

Authority: 15 U.S.C. 77d, 77d–1, 77s, 77z–3, 78c, 78o, 78q, 78w, 78mm, and Pub. L. 112–106, secs. 301–305, 126 Stat. 306 (2012).

■ 2. Amend § 227.202 by adding paragraph (c) to read as follows:

§ 227.202 Ongoing reporting requirements.

* * * * *

(c) Temporary relief from certain reporting requirements is provided as follows:

(1) An issuer that is not able to meet a filing deadline for any report or form required to be filed by this section or § 227.203(a)(3) or (b) during the period from and including March 26, 2020, to May 31, 2020, due to circumstances relating to coronavirus disease 2019 (COVID–19) shall be deemed to have satisfied the filing deadline for such report or form if:

(i) The issuer promptly discloses on its public website or through an intermediary's platform, or provides direct notification to its investors, that it is relying on this paragraph (c); and

(ii) The issuer files such report or form with the Commission no later than 45 days after the original filing deadline of the report or form.

(2) In any report or form filed pursuant to paragraph (c)(1)(ii) of this section, the issuer must disclose that it is relying on this paragraph (c) and state the reasons why, in good faith, it could not file such report or form on a timely basis.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 3. The general authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 4. Amend § 230.257 by adding paragraph (f) to read as follows:

§ 230.257 Periodic and current reporting; exit report.

* * * * *

(f) *Temporary relief from ongoing reporting requirements.* (1) An issuer that is not able to meet a filing deadline for any report or form required to be filed by § 230.252(f)(2)(i) or paragraphs (a) through (c) of this section during the period from and including March 26, 2020, to May 31, 2020, due to circumstances relating to coronavirus disease 2019 (COVID–19) shall be deemed to have satisfied the filing deadline for such report or form if:

(i) The issuer promptly discloses on its public website or provides direct notification to its investors that it is relying on this paragraph (f); and

(ii) The issuer files such report or form with the Commission no later than 45 days after the original filing deadline of the report or form.

(2) In any report or form filed pursuant to paragraph (f)(1)(ii) of this section, the issuer must disclose that it is relying on this paragraph (f) and state the reasons why, in good faith, it could not file such report or form on a timely basis.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 5. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*, 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Amend § 232.10 by adding paragraph (c) to read as follows:

§ 232.10 Application of part 232.

* * * * *

(c) Temporary relief from Form ID notarization requirement is provided as follows:

(1) An applicant subject to the notarization requirement under paragraph (b) of this section who is unable to obtain the notarization due to circumstances relating to coronavirus disease 2019 (COVID–19) may upload the manually signed PDF copy of the attachment to the Form ID filing without the notarization *provided that* the applicant indicates on the face of the signed document that the applicant could not provide the required notarization due to circumstances relating to coronavirus disease 2019 (COVID–19).

(2) Commission staff will issue codes necessary to file on the EDGAR system in the cases described in paragraph (c)(1) from March 26, 2020, to July 1, 2020, to allow filers to proceed with required electronic filings. The required notarized document must be submitted as correspondence via EDGAR within 90 days of EDGAR codes issuance; if it is not, the Commission staff is authorized to inactivate the filer's EDGAR codes.

(3) The Commission or its staff may inactivate or terminate codes issued under this paragraph (c) if the staff has reason to believe that such action is necessary for the protection of investors.

* * * * *

By the Commission.

Dated: March 26, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–06721 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0195]

RIN 1625–AAOO

Safety Zone; Mamala Bay, Honolulu, HI—Voluntary First Amendment Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within Mamala Bay, Honolulu Hawaii. The safety zone is needed to protect personnel and vessels who may want to exercise their First Amendment in the vicinity of Honolulu Harbor and Honolulu Channel. Entrance into the safety zone does not require notification to the COTP or the COTP's designated representative; however persons or vessels operating within the safety zone shall travel at the minimum speed necessary to maintain a safe course. Addtionally, each person in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Vessels wishing to enter the safety zone will not be allowed to cross an active security zone and should make alternative arrangements if necessary.

DATES: This rule is effective without actual notice from March 31, 2020 through 11:59 p.m. April 17, 2020. For the purposes of enforcement, actual notice will be used from March 20, 2020 through March 31, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0195 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 Joshua Williams, Chief of Waterways Management, Sector Honolulu, U.S. Coast Guard; telephone 808–541–4359, email *Joshua.B.Williams@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 immediate action is needed to protect the public exercising their First Amendment rights in an area that a large passenger vessel will need to transit, and therefore publishing an NPRM is impracticable and contrary to public interest.

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 allow invividuals a safe location to exercise their First Amendment rights.

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 (COTP) Honolulu believes that given the nature of the First Amendment activity expected and the likely type of vessels used by individuals desiring to express their First Amendment rights—namely kayaks and other small vessels—the safety zone designating a voluntary First Amendment Area is necessary to ensure the safety of those vessels and persons who choose to express their views safely and without interference from, or interfering with, other maritime traffic.

IV. Discussion of the Rule

From March 20, 2020 through April 17, 2020 there could be a number of large passenger vessels calling on the port of Honolulu. During these historic times taking place around the United States, there are individuals who have the desire to exercise their First Amendment rights. Therefore, this safety zone is located within the COTP zone (See 33 CFR 3.70–10) and will encompass an area beginning at a point 21°17′52″ N, 157°52′61″ W near the shore of Sand Island, thence West to a point 21°17′52″ N, 157°52′77″ W, thence South to a point 21°17′37″ N, 157°52′77″ W near the coastal waters of Mamala Bay, thence East to a point 21°17′37″ N, 157°52′61″ W, thence to the beginning point. This zone extends from the surface of the water to the ocean floor, while large passenger vessels are transiting Honolulu channel. Entrance into the safety zone does not require notification to the COTP or the COTP's designated representative; however persons or vessels operating within the safety zone shall travel at the minimum speed necessary to maintain a safe course. Additionally, 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. Vessels wishing to enter the safety zone will not be allowed to cross an active security zone and should make alternative arrangements if necessary.

While the Coast Guard is concerned about any security threats to the areas described above, the Coast Guard is likewise committed to ensuring that individuals who wish to express their opinions on any issue during these large passenger vessel transits, have the means to do so in a manner that protects them and other vessels operating on Mamala Bay and surrounding waters. Therefore, this safety zone is located within the COTP zone (See 33 CFR 3.70–10) and will encompass an area beginning at a point 21°17′52″ N, 157°52′61″ W near the shore of Sand Island, thence West to a point 21°17′52″ N, 157°52′77″ W, thence South to a point 21°17′37″ N, 157°52′77″ W near the coastal waters of Mamala Bay, thence East to a point 21°17′37″ N, 157°52′61″ W, thence to the beginning point, wherein the Coast Guard will allow demonstrators or any individual who wishes to express their views. This area is being established to allow individuals expressing their views the means to do so in a safe manner to their intended audience without posing an undue risk to maritime safety. After analyzing maritime traffic patterns and other environmental factors, the Coast Guard is requiring that any persons or vessels permitted to operate within the safety zone shall travel at the minimum speed necessary to maintain a safe course. The navigation rules shall apply at all times within the safety zone. Anchoring is prohibited within this zone.

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 year of the safety zone. Vessel traffic will be able to safely transit around the safety zone; the zone will impact a small designated area and will be enforced only during the event and event-related activities. The safety zone will be in a location where commercial vessel traffic is expected to be minimal during enforcement; commercial vessel traffic will be authorized to transit the safety zone to the extent compatible with public safety and security. Persons and vessels will be able to operate in the surrounding area adjacent to the zone during the enforcement period, and will be able to enter within the safey zone if authorized by the Captain of the Port Honolulu or a designated representative. Moreover, the Coast Guard will issue a Broadcast to Mariners via VHF–FM maine channel 16 about 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 enforced intermittently between March 20, 2020 through April 17, 2020 that will prohibit entry into an area beginning at a point 21°17′52″ N, 157°52′61″W near the shore of Sand Island, thence West to a point 21°17′52″ N, 157°52′77″ W, thence South to a point 21°17′37″ N, 157°52′77″ W near the coastal waters of Mamala Bay, thence East to a point 21°17′37″ N, 157°52′61″ W, thence to the beginning point. It is categorically excluded from further review under paragraph L60(d) 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.T14–0195 to read as follows:

§ 165.T14–0195 Safety Zone; Pacific Ocean, Mamala Bay, HI—Voluntary First Amendment Zone

(a) *Location.* The safety zone is located within the COTP Zone (See 33 CFR 3.70–10) and will encompass all navigable waters at an area beginning at a point 21°17′52″ N, 157°52′61″ W near the shore of Sand Island, thence West to a point 21°17′52″ N, 157°52′77″ W, thence South to a point 21°17′37″ N, 157°52′77″ W near the coastal waters of Mamala Bay, thence East to a point 21°17′37″ N, 157°52′61″ W, thence to the beginning point. This zone extends from the surface of the water to the ocean floor.

(b) *Regulations.* The general regulations governing safety zones contained in 33 CFR 165.23 apply to the safety zone created by this temporary final rule.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR part 165.

(2) Entry into or remaining in this zone does not require notification to the COTP or the COTP's designated representative; however persons or vessels operating within the safety zone shall travel at the minimum speed necessary to maintain a safe course. Under the general safety zone regulations in § 165.23(d) of this part, each person in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Vessels wishing to enter the safety zone will not be allowed to cross an active security zone and should make alternative arrangements.

(3) Persons desiring to transit the safety zone identified in paragraph (a) of this section may contact the COTP at the Command Center telephone number (808) 842–2600 and (808) 842–2601, fax (808) 842–2642 or on VHF channel 16 (156.8 Mhz).

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

(c) *Notice of enforcement.* The COTP Honolulu will cause Notice of the Enforcement of the safety zone described in this section to be made by Broadcast to the maritime community via marine safety broadcast notice to mariners on VHF channel 16 (156.8 MHz).

(d) *Definitions.* As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the safety zone described in paragraph (a) of this section.

(e) *Enforcement period.* This rule will be enforced interminttently from March 20, 2020, through 11:59 p.m. on April 17, 2020. If the safety zone is terminated prior to 11:59 p.m. on April 17, 2020, the Coast Guard will provide notice via a broadcast notice to mariners.

Dated: March 20, 2020.

A.B. Avanni,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 2020–06259 Filed 3–30–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 200325–0088]

RIN 0648–BJ51

Fisheries of the Northeastern United States; Framework Adjustment 32 to the Atlantic Sea Scallop Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements Framework Adjustment 32 to the Atlantic Sea Scallop Fishery Management Plan. This action is necessary to set scallop specifications and other measures for fishing years 2020 and 2021, and implement measures to protect small scallops and reduce bycatch of flatfish. This action is intended to prevent overfishing and improve both yield-per-recruit and the overall management of the Atlantic sea scallop resource.

DATES: Effective April 1, 2020.

ADDRESSES: The New England Fishery Management Council developed an environmental assessment for this action that describes the measures in Framework Adjustment 32 and other considered alternatives and analyzes the impacts of the measures and alternatives. Copies of Framework 32, the environmental assessment, the Initial Regulatory Flexibility Analysis (IRFA), and information on the economic impacts of this rulemaking are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: *https://www.nefmc.org/library/framework-32.*

Copies of the small entity compliance guide are available from Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, or available on the internet at: *http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/.*

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, 978–281–9233.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council adopted Framework 32 to the Atlantic Sea Scallop Fishery Management Plan (FMP) on December 5, 2019. The Council submitted an environmental assessment to NMFS on March 6, 2020, for approval. NMFS published a proposed rule for Framework 32 on February 20, 2020 (85 FR 9705). To help ensure that the final rule would be implemented before April 1, 2020, the start of the fishing year, the proposed rule included a 15-day public comment period that closed on March 6, 2020.

NMFS has approved all of the measures in Framework 32 recommended by the Council, as described below. This final rule implements Framework 32, which sets scallop specifications and other measures for fishing years 2020 and 2021, including changes to the catch, effort, and quota allocations and adjustments to the rotational area management program for fishing year 2020, measures to reduce bycatch of flatfish, and default specifications for fishing year 2021. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. NMFS generally defers to the Council's policy choices unless there is a clear inconsistency with the law or the FMP. Details concerning the development of these measures were contained in the preamble of the proposed rule and are not repeated here. This final rule also addresses regulatory text that is unnecessary, outdated, or unclear consistent with section 305(d) of the Magnuson-Stevens Act.

Specification of Scallop Overfishing Limit (OFL), Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Annual Catch Targets (ACTs), Annual Projected Landings (APLs) and Set-Asides for the 2020 Fishing Year, and Default Specifications for Fishing Year 2021

The Council set the OFL based on a fishing mortality (F) of 0.64, equivalent to the F threshold updated through the Northeast Fisheries Science Center's most recent scallop benchmark stock assessment that was completed in August 2018. The ABC and the equivalent total ACL for each fishing year are based on an F of 0.51, which is the F associated with a 25-percent probability of exceeding the OFL. The Council's Scientific and Statistical Committee (SSC) recommended scallop fishery ABCs of 100.1 million lb (45,414 mt) for 2020 and 80.3 million lb (36,435 mt) for the 2021 fishing year, after accounting for discards and incidental mortality. The SSC will reevaluate and potentially adjust the ABC for 2021 when the Council develops the next framework adjustment.

Table 1 outlines the scallop fishery catch limits derived from the ABC values and the projected landings of the fleet.

TABLE 1—SCALLOP CATCH LIMITS (mt) FOR FISHING YEARS 2020 AND 2021 FOR THE LIMITED ACCESS AND LIMITED ACCESS GENERAL CATEGORY (LAGC) IFQ FLEETS

Catch limits	2020 (mt)	2021 (mt) [1]
Overfishing Limit	56,186	47,503
Acceptable Biological Catch/ACL (discards removed)	45,414	36,435
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	454	364
ACL for fishery	44,370	35,481
Limited Access ACL	41,930	33,530
LAGC Total ACL	2,440	1,951
LAGC IFQ ACL (5 percent of ACL)	2,219	1,774
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	222	177
Limited Access ACT	37,819	30,242
APL (after set-asides removed)	22,370	([1])
Limited Access Projected Landings (94.5 percent of APL)	21,140	([1])
Total IFQ Annual Allocation (5.5 percent of APL) [2]	1,230	923
LAGC IFQ Annual Allocation (5 percent of APL) [2]	1,119	839
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	112	84

[1] The catch limits for the 2021 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2021 that will be based on the 2020 annual scallop surveys.
[2] As a precautionary measure, the 2021 IFQ annual allocations are set at 75 percent of the 2020 IFQ Annual Allocations.

This action deducts 1.25 million lb (567 mt) of scallops annually for 2020 and 2021 from the ABC for use as the Scallop RSA to fund scallop research. Participating vessels are compensated through the sale of scallops harvested under RSA projects. Of the 1.25 million-lb (567-mt) allocation, NMFS has already allocated 86,953 lb (39,441 kg) to previously funded multi-year projects as part of the 2019 RSA awards process. NMFS reviewed proposals submitted for consideration of 2020 RSA awards and announced project selections on March 11, 2020. Details on the 2020 RSA awards can be found on our website here: *https://www.fisheries.noaa.gov/new-england-mid-atlantic/science-data/2020-2021-sea-scallop-and-monkfish-research-set-aside.*

This action also deducts 1 percent of the ABC for the industry-funded observer program to help defray the cost to scallop vessels that carry an observer. The observer set-aside is 454 mt for 2020 and 364 mt for 2021. In fishing year 2020, the compensation rates for limited access vessels in open areas fishing under days-at-sea (DAS) is 0.12 DAS per DAS fished. For access area trips, the compensation rate is 250 lb (113 kg), in addition to the vessel's possession limit for the trip for each day or part of a day an observer is onboard. LAGC IFQ vessels may possess an additional 250 lb (113 kg) per trip when carrying an observer. NMFS may adjust the compensation rate throughout the fishing year, depending on how quickly the fleets are using the set aside. The Council may adjust the 2021 observer set-aside when it develops specific, non-default measures for 2021.

Open Area DAS Allocations

This action implements vessel-specific DAS allocations for each of the three limited access scallop DAS permit categories (*i.e.,* full-time, part-time, and occasional) for 2020 and 2021 (Table 2). The 2020 DAS allocations are the same as those allocated to the limited access fleet in 2019. Framework 32 sets 2021 DAS allocations at 75 percent of fishing year 2020 DAS allocations as a precautionary measure. This is to avoid over-allocating DAS to the fleet in the event that the 2021 specifications action is delayed past the start of the 2021 fishing year. The allocations in Table 2 exclude any DAS deductions that are required if the limited access scallop fleet exceeds its 2019 sub-ACL.

TABLE 2—SCALLOP OPEN AREA DAS ALLOCATIONS FOR 2020 AND 2021

Permit category	2020	2021 (default)
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.50

Changes to Fishing Year 2020 Sea Scallop Access Area Boundaries

For fishing year 2020 and the start of 2021, Framework 32 keeps the Mid-Atlantic Access Area (MAAA) and Closed Area I Access Area (CAI) open as access areas. In addition, this action opens three new areas, *i.e.,* Nantucket Lightship-South-Deep Access Area (NLS–S–D) (Table 3), Nantucket Lightship-North Access Area (NLS–N) (Table 4), and Closed Area II Access Area (CAII) (Table 5). The boundaries for these areas will change slightly compared to previous years to better direct fishing on the scallops intended for harvest, to protect small scallops, and to reduce flatfish bycatch.

TABLE 3—NANTUCKET LIGHTSHIP-SOUTH-DEEP SCALLOP ACCESS AREA

Point	N latitude	W longitude
NLSSD1	40°22′	69°30′
NLSSD2	40°15′	69°30′
NLSSD3	40°15′	69°00′
NLSSD4	40°28′	69°00′
NLSSD5	40°28′	69°17′
NLSSD1	40°22′	69°30′

TABLE 4—NANTUCKET LIGHTSHIP-NORTH SCALLOP ACCESS AREA

Point	N latitude	W longitude
NLSN1	40°50′	69°30′
NLSH2	40°50′	69°00′
NLSN3	40°28′	69°00′
NLSN4	40°28′	69°30′
NLSN1	40°50′	69°30′

TABLE 5—CLOSED AREA II SCALLOP ACCESS AREA

Point	N latitude	W longitude	Note
CAIIA1	41°30′	67°20′	
CAIIA2	41°11′	67°20′	
CAIIA3	41°11′	66°41′	
CAIIA4	41°00′	66°41′	
CAIIA5	41°00′	(1)	(2)
CAIIA6	41°30′	(3)	(2)
CAIIA1	41°30′	67°20′	

[1] The intersection of 41°00′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°00′ N lat. and 66°09.33′ W long.
[2] From Point CAIIA5 connected to Point CAIIA6 along the U.S.-Canada Maritime Boundary.
[3] The intersection of 41°30′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30′ N lat., 66°34.73′ W long.

Fishing Year 2020 Sea Scallop Closed Area Boundaries

Framework 32 closes three areas to scallop fishing for various reasons. This action closes the Closed Area II-Southwest and Extension Scallop Rotational Area (Table 6) to scallop fishing. Closing this area will protect small scallops that have not yet recruited to the fishery. In addition, closing this area is expected to reduce bycatch of Georges Bank yellowtail flounder and northern windowpane flounder on Georges Bank.

TABLE 6—CLOSED AREA II—SOUTHWEST AND EXTENSION SCALLOP CLOSED AREA

Point	N latitude	W longitude	Note
CAIISWE1	41°11′	67°20′	
CAIISWE2	41°11′	66°41′	
CAIISWE3	41°0′	66°41'	
CAIISWE4	41°0′	(1)	(2)
CAIISWE5	40°40′	(3)	(2)
CAIISWE6	40°40′	67°20′	
CAIISWE1	41°11′	67°20′	

[1] The intersection of 41°0′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°0′ N lat. and 66°09.33′ W long.
[2] From Point CAIISWE 4 connected to Point CAIISWE5 along the U.S.-Canada Maritime Boundary.
[3] The intersection of 40°40′ N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40′ N lat. and 65°52.61′ W long.

This action also closes the Nantucket Lightship-Triangle Scallop Rotational Area (Table 7). The Council is closing this area because it is a small area with low scallop densities that could be used for research purposes in the absence of fishing.

TABLE 7—NANTUCKET LIGHTSHIP-TRIANGLE SCALLOP CLOSED AREA

Point	N latitude	W longitude
NLST1	40°28′	69°30′
NLST2	40°28′	69°17′
NLST3	40°22′	69°30′
NLST1	40°28′	69°30′

Finally, Framework 32 closes the Stellwagen Bank Scallop Rotational Area (Table 8) through fishing year 2021. This closure protects a substantial number of small scallops that have not recruited into the fishery. This closure will be re-assessed after 1 year to confirm that it is protecting small scallops, as intended, and improving yield-per-recruit. In addition, closing this area is expected reduce bycatch of northern windowpane flounder on Stellwagen Bank.

TABLE 8—STELLWAGEN BANK SCALLOP CLOSED AREA

Point	N latitude	W longitude
SB1	42°26′	70°27′
SB2	42°26′	70°15′
SB3	42°20′	70°15′
SB4	42°20′	70°27′
SB1	42°26′	70°27′

Areas Reverting to Open Area

Framework 32 opens two areas previously managed as part of the area rotation program because they no longer meet the criteria for either closure or controlled access, specifically the Nantucket Lightship-Hatchet Scallop Rotational Area and the Nantucket Lightship-West (NLS–W) Scallop Rotational Area. These areas will become part of the open area and can be fished as part of the DAS program or on LAGC IFQ trips. Because fishing year 2019 carryover access area fishing will continue in NLS–W until May 30, 2020, this area will not revert to open area until May 31, 2020.

Extension of CAII Seasonal Closure To Mitigate Flatfish Bycatch

Framework 32 extends the existing seasonal closure in CAII an additional 15 days to reduce bycatch of northern windowpane flounder and Georges Bank yellowtail flounder. The previous seasonal closure in CAII occurs from August 15–November 15 of each year. This action extends that closure for 15 additional days from August 15–November 30 for the 2020 fishing year only.

Full-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 9 provides the limited access full-time allocations for all of the access areas for the 2020 fishing year and the first 60 days of the 2021 fishing year. These allocations can be landed in as many trips as needed, so long as vessels do not exceed the possession limit (also in Table 9) on any one trip.

TABLE 9—SCALLOP ACCESS AREA FULL-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2020 AND 2021

Rotational access area	Scallop possession limit	2020 Scallop allocation	2021 Scallop allocation (default)
Closed Area I Flex [1]	18,000 lb (8,165 kg) per trip	9,000 lb (4,082 kg)	0 lb (0 kg).
Closed Area II		18,000 lb (8,165 kg)	0 lb (0 kg).
Nantucket Lightship-North		9,000 lb (4,082 kg)	0 lb (0 kg).
Nantucket Lightship-South-Deep		18,000 lb (8,165 kg)	0 lb (0 kg).
Mid-Atlantic		36,000 lb (16,329 kg)	18,000 lb (8,165 kg).
Total		90,000 lb (40,823 kg)	18,000 lb (8,165 kg).

[1] Closed Area I flex allocation could be landed from either Closed Area I or the Mid-Atlantic Access Area.

Closed Area I Flex Allocation

Framework 32 allocates 9,000 lb (4,082 kg) of flexible allocation (flex allocation) in CAI to limited access full-time vessels (Table 9). Because of uncertainty about the condition of the resource in CAI, a full-time limited access vessel may choose to land its CAI allocation from either CAI or the MAAA for the 2020 fishing year and the first 60 days of the 2021 fishing year. For example, a vessel could take a trip in CAI and land 5,000 lb (2,268 kg) from that area, leaving the vessel with 4,000 lb (1,814 kg) of the CAI flex allocation available, which could be landed from the MAAA, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip. Framework 32 does not allocate any flex allocation to part-time limited access vessels.

Changes to the Full-Time Limited Access Vessels' One-for-One Access Area Allocation Exchanges

Framework 32 allocates each full-time limited access vessel 9,000 lb (4,082 kg) of allocation to both CAI and NLS–N. To accommodate one-for-one access area allocation changes among all available access areas, this action allows full-time limited access vessels to exchange access area allocation in 9,000-lb (4,082-kg) increments. The owner of a vessel issued a full-time limited access scallop permit may exchange unharvested scallop pounds allocated into an access area for another full-time limited access vessel's unharvested scallop pounds allocated into another access area. For example, a full-time vessel may exchange 9,000 lb (4,082 kg), from one access area for 9,000 lb (4,082 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 18,000 lb (8,165 kg) from one access area for 18,000 lb (8,165 kg) allocated to another full-time vessel for another access area. One-for-one access area allocations for part-time limited access vessels remain unchanged and must occur in the increments of a possession limit, *i.e.,* 12,000 lb (5,443 kg).

Changes to the Crew Restrictions for Trips in Nantucket Lightship-South-Deep Access Area

The scallops in the NLS–S–D are expected to have lower yield than similar sized scallops in other areas. Because these scallops are smaller than those normally harvested in the area rotation program, Framework 32 allows two additional crew members aboard both limited access full-time (10 in total) and limited access full-time small dredge vessels (8 in total). This allows vessels to add additional crew members to increase the shucking capacity of the vessel and reach the possession limit in a time more consistent with other access areas.

Part-Time Limited Access Allocations and Trip Possession Limits for Scallop Access Areas

Table 10 provides the limited access part-time allocations for all of the access areas for the 2020 fishing year and the first 60 days of the 2021 fishing year. These allocations can be landed in as many trips as needed, so long as the vessels do not exceed the possession limit (also in Table 10) on any one trip.

TABLE 10—SCALLOP ACCESS AREA PART-TIME LIMITED ACCESS VESSEL POUNDAGE ALLOCATIONS AND TRIP POSSESSION LIMITS FOR 2020 AND 2021

Rotational access area	Scallop possession limit	2020 Scallop allocation	2021 Scallop allocation (default)
Closed Area II	12,000 lb (5,443 kg) per trip	12,000 lb (5,443 kg)	0 lb (0 kg).
Mid-Atlantic		24,000 lb (10,886 kg)	7,200 lb (3,266 kg).
Total		36,000 lb (16,329 kg)	7,200 lb (3,266 kg).

Payback Measures for 2020 Default Poundage Allocations in NLS–W

Framework 32 does not allocate effort into the NLS–W, but instead reverts NLS–W to part of the open area. If NMFS implements these Framework 32 measures after the April 1 start of fishing year 2020, default access area allocations, which were established in Framework 30 to the Scallop FMP (84 FR 11436; March 27, 2019) will go into place on April 1. Full-time vessels will receive 18,000 lb (8,165 kg) of NLS–W allocation and part-time vessels will receive 7,200 lb (3,266 kg) of NLS–W allocation. Because of this discrepancy, this action sets payback measures intended to disincentivize vessels from fishing in NLS–W using 2020 default allocations.

If Framework 32 implementation is delayed, and a vessel fishes any of its fishing year 2020 default NLS–W access area allocation established through Framework 30, that vessel will lose its CAII allocation established through Framework 32. This does not prohibit vessels from fishing the remainder of their fishing year 2019 NLS–W allocation during the first 60 days of fishing year 2020. If Framework 32 is delayed, NMFS will notify all limited access permit holders of these payback measures and other fishing year 2020 default allocations.

LAGC Measures

1. ACL and IFQ Allocation for LAGC Vessels with IFQ Permits. For LAGC vessels with IFQ permits, this action implements a 2,219-mt ACL for 2020 and a 1,774-mt default ACL for 2021 (see Table 1). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by the LAGC IFQ fleets. The annual allocation to the LAGC IFQ-only fleet for fishing years 2020 and 2021 based on APL is 1,119 mt for 2020 and 839 mt for 2021 (see Table 1). Each vessel's IFQ is calculated from these allocations based on APL.

2. ACL and IFQ Allocation for Limited Access Scallop Vessels with IFQ Permits. For limited access scallop vessels with IFQ permits, this action implements a 222-mt ACL for 2020 and a default 177-mt ACL for 2021 (see Table 1). These sub-ACLs have no associated regulatory or management requirements, but provide a ceiling on overall landings by this fleet. If the fleet were to reach this ceiling, any overages would be deducted from the following year's sub-ACL. The annual allocation to limited access vessels with IFQ permits is 112 mt for 2020 and 84 mt for 2021 (see Table 1). Each vessel's IFQ is calculated from these allocations based on APL.

3. LAGC IFQ Trip Allocations for Scallop Access Areas. Framework 32 allocates LAGC IFQ vessels a fleet-wide number of trips in CAI, NLS–N, NLS–S–D, and MAAA for fishing year 2020 and default trips in the MAAA for fishing year 2021 (see Table 11). The scallop catch associated with the total number of trips for all areas combined (2,855 trips) for fishing year 2020 is equivalent to the 5.5 percent of total projected catch from access areas.

TABLE 11—FISHING YEARS 2020 AND 2021 LAGC IFQ TRIP ALLOCATIONS FOR SCALLOP ACCESS AREAS

Scallop access area	2020	2021 [1]
Closed Area I	571	0
Nantucket Lightship-North	571	0
Nantucket Lightship-South-Deep	571	0
Mid-Atlantic	1,142	571
Total	2,855	571

[1] The LAGC IFQ access area trip allocations for the 2021 fishing year are subject to change through a future specifications action or framework adjustment.

4. Northern Gulf of Maine (NGOM) Total Allowable Catch (TAC). This action implements a 350,000-lb (158,757-kg) NGOM TAC for fishing year 2020 and a 265,000-lb (120,202-kg) default NGOM TAC for fishing year 2021. The final rule for NGOM portions of Framework 29 (83 FR 12857; March 26, 2019) developed a methodology for splitting the NGOM TAC between the LAGC and the limited access fleets. Framework 32 continues splitting the TAC using this methodology. The limited access portion of the TAC may only be fished by vessels participating in the RSA program that are participating in a project that has been allocated NGOM RSA allocation. The LAGC portion of the TAC may be fished by NGOM and LAGC IFQ vessels on trips with a 200-lb (90.7-kg) possession limit until the TAC has been harvested. Table 12 describes the division of the TAC for the 2020 and 2021 (default) fishing years.

During the 2018 fishing year the LAGC fleet exceeded its portion of the NGOM TAC by 3,718 lb (1,686 kg). This triggers a pound-for-pound deduction to the LAGC portion of the NGOM TAC to account for the overage. Because final catch accounting data for the 2018 fishing year was not available in time to implement this deduction in the 2019 fishing year, the LAGC portion of the NGOM TAC for the 2020 fishing year is reduced by 3,718 lb (1,686 kg) to account for the overage. The resulting LAGC NGOM TAC is 206,282 lb (93,567 kg) and the total 2020 NGOM TAC is 346,282 lb (157,071 kg).

TABLE 12—NGOM TACS FOR FISHING YEAR 2020 AND 2021

Fleet	2020		2021 [1]	
	lb	kg	lb	kg
LAGC	206,282	93,567	167,500	75,977
Limited access	140,000	63,503	97,500	44,225
Total	346,282	157,071	265,000	120,202

[1] The NGOM TACs for the 2021 fishing year are subject to change through a future specifications action or framework adjustment.

5. Scallop Incidental Catch Target TAC. This action implements a 50,000-lb (22,680-kg) scallop incidental catch target TAC for fishing years 2020 and 2021 to account for mortality from vessels that catch scallops while fishing for other species and ensure that F targets are not exceeded. The Council and NMFS may adjust this target TAC in a future action if vessels catch more scallops under the incidental target TAC than predicted.

RSA Harvest Restrictions

This action allows vessels participating in RSA projects to harvest RSA compensation from the MAAA and the open area. All vessels are prohibited from harvesting RSA compensation pounds in all other access areas. Vessels are prohibited from fishing for RSA compensation in the NGOM unless the vessel is fishing an RSA compensation trip using NGOM RSA allocation that was awarded to an RSA project. Finally, Framework 32 prohibits the harvest of RSA from any access areas under default 2021 measures. At the start of

2021, RSA compensation may only be harvested from open areas. The Council will re-evaluate this default prohibition measure in the action that would set final 2021 specifications.

Regulatory Corrections Under Regional Administrator Authority

This rule includes eight revisions to address regulatory text that is unnecessary, outdated, or unclear. These revisions are consistent with section 305(d) of the Magnuson-Stevens Act, which provides authority to the Secretary of Commerce to promulgate regulations necessary to ensure that amendments to an FMP are carried out in accordance with the FMP and the Magnuson-Stevens Act. The first revision, at § 648.4(a)(2)(ii)(G)(*1*)(*ii*), corrects a typo referencing NGOM permits. The second revision, at § 648.10(f)(4)(ii), clarifies that vessels only need to send in a daily catch report through their vessel monitoring system (VMS) on trips greater than 24 hours. NMFS no longer requires this report on trips less than 24 hours because all of the information provided can be determined from the required pre-landing report. The third revision at § 648.14(i)(1)(iii)(A)(*4*) clarifies that all NGOM vessels are prohibited from possessing scallops in Federal waters of the NGOM management area when declared into the state waters fishery exemption program. The fourth revision removes paragraph § 648.14(i)(3)(i)(B) because possession limits for all LAGC vessels are clearly articulated in § 648.14(i)(1)(iii). The fifth revision at § 648.14(i)(4)(i)(G) clarifies that LAGC IFQ vessels can possess more than 40 lb (18.1 kg) of shucked scallops on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) while not fishing in a scallop access area. The sixth revision, at § 648.52(b), clarifies that LAGC vessels declared into the NGOM scallop fishery may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked scallops, or possess more than 25 bu (8.81 hL) of in-shell scallops shoreward of the VMS Demarcation Line for vessels declared into the NGOM fishery. The seventh revision at § 648.52(c), clarifies that LAGC IFQ vessels on a properly declared Northeast multispecies, surfclam, or ocean quahog trip or other fishery requiring a VMS declaration can possess more than 40 lb (18.1 kg) of shucked scallops, or possess more than 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line. The final revision, at § 648.53(h)(5), clarifies that LAGC IFQ permit owners can temporarily transfer IFQ more than once (*i.e.,* re-transfer) in a given fishing year. No public comments were received on these regulatory corrections.

Comments and Responses

We received three comments on the proposed rule during the public comment period; one that was unrelated to the proposed measures; one from the Fisheries Survival Fund (FSF), which represents the significant majority of full-time Limited Access permit holders in the Atlantic scallop fishery, in support of the action; and one from an industry member who was opposed to closing Stellwagen Bank in the NGOM. We are not addressing the unrelated comment in this final rule.

Comment 1: An industry member commented that NMFS should not implement the closure on the portion of Stellwagen Bank because small boats cannot take any more restrictions.

Response: The Council recommended the closure on Stellwagen Bank to protect a substantial number of small scallops that have not yet recruited into the fishery and intends to reopen this area in a future year to allow for the harvest of these scallops once they reach an optimum size. Further, the 2020 NGOM TAC is set based only on available scallops in Ipswich Bay and on Jefferys Ledge that would be available for harvest and not those in the Stellwagen Bank closure. The resultant TAC provides the highest allowable catch for the NGOM fleet in history.

Comment 2: FSF commented in support of the action and urged that NMFS implement Framework 32 by April 1, 2020. FSF specifically acknowledged its support for the adjustments to one-for-one access area allocation exchanges, the opening of NLS–S–D, and the changes to the crew restrictions for trips in the NLS–S–D.

Response: NMFS appreciates the comment.

Classification

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

The Office of Management and Budget has determined that this rule is not significant pursuant to E.O. 12866.

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

This action does not contain any collection-of-information requirements subject to the Paperwork Reduction Act (PRA).

The Assistant Administrator for Fisheries has determined that the need to implement the measures of this rule in an expedited manner is necessary to achieve conservation objectives for the scallop fishery and certain fish stocks. This constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in the date of effectiveness and to make the final Framework 32 measures effective on April 1, 2020.

The 2020 fishing year begins on April 1, 2020. If Framework 32 is delayed beyond April 1, certain default measures, including access area designations, DAS, IFQ, research set-aside and observer set-aside allocations, would automatically be put into place. Most of these default allocations were set more conservatively than what would be implemented under Framework 32. Under default measures, each full-time vessel has 18 DAS and two access area trips for 18,000 lb (8,165 kg) each (one in the Mid-Atlantic Access Area and one in the Nantucket Lightship-West Access Area). However, Framework 32 will not allocate effort into the Nantucket Lightship-West. Framework 32 has payback measures should a vessel harvest any of its default allocation in this area. We have good cause to waive the 30-day delay in effectiveness because this action provides full-time vessels with an additional 6 DAS (24 DAS total) and 54,000 lb (24,494 kg) in access area allocations (90,000 lb (40,823 kg) total). Further, LAGC IFQ vessels will receive an additional 99-mt (1,119-mt total) allocation and 1,713 access area trips spread out across 4 access areas (2,855 trips total). Accordingly, this action prevents more restrictive aspects of the default measures from going into place. Framework 32 could not have been put into place sooner to allow for a 30-day delayed effectiveness because the information and data necessary for the Council to develop the framework was not available in time for this action to be forwarded to NMFS and implemented by April 1, 2020, the beginning of the scallop fishing year. Delaying the implementation of this action for 30 days would delay positive economic benefits to the scallop fleet and could negatively impact the access area rotation program by delaying fishing in access areas that should be available.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has completed a final regulatory flexibility analysis (FRFA) in support of Framework 32. The FRFA incorporates the IRFA, a summary of the significant issues raised by public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 32 environmental assessment, and the preamble to this final rule. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 32 and in the preambles to the proposed rule and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and/or the Council, and a copy of the IRFA, the Regulatory Impact Review (RIR), and the environmental assessment are available upon request (see **ADDRESSES**).

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

There were no specific comments on the IRFA or on the economic impacts of the rule more generally.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The regulations affect all vessels with limited access and LAGC scallop permits, but there is no differential effect based on whether the affected entities are small or large. As explained in the section below, the regulations are expected to result in lower profits for small entities compared to fishing year 2019. Framework 32 provides extensive information on the number and size of vessels and small businesses that will be affected by the regulations, by port and state (see **ADDRESSES**). Fishing year 2018 data were used for this analysis because these data are the most recent complete data set for a fishing year. There were 313 vessels that held full-time limited access permits in 2018, including 249 dredge, 54 small-dredge, and 12 scallop trawl permits. In the same year, there were also 32 part-time limited access permits in the scallop fishery. No vessels were issued occasional limited access permits in 2018. NMFS issued 245 LAGC IFQ permits and 102 LAGC NGOM permits in 2018. About 127 of the IFQ vessels and 41 NGOM vessels actively fished for scallops in 2018. The remaining IFQ permits likely leased out scallop IFQ allocations with their permits in Confirmation of Permit History. Section 6.6 of Framework 32 provides extensive information on the number and size of vessels that are affected by the proposed regulations, their home and principal state, dependency on the scallop fishery, and revenues and profits (see **ADDRESSES**).

For RFA purposes, NMFS defines a small business in a shellfish fishery as a firm that is independently owned and operated with receipts of less than $11 million annually (see 50 CFR 200.2). Individually permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, even beyond those impacted by this final rule. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. For the purposes of this analysis, ownership entities are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an ownership entity. For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ownership entity that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement between the two owners for the additional vessels would be considered a separate ownership entity for the purpose of this analysis.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. The current ownership dataset is based on the calendar year 2018 permits and contains average gross sales associated with those permits for calendar years 2016 through 2018. Matching the potentially impacted 2018 fishing year permits described above (limited access and LAGC IFQ) to calendar year 2018 ownership data results in 167 distinct ownership entities for the limited access fleet and 95 distinct ownership entities for the LAGC IFQ fleet. Of these, 158 of the limited access distinct ownership entities and 95 LAGC IFQ entities are categorized as small entities. The remaining nine of the limited access and none of the LAGC IFQ entities are categorized as large entities. There were 41 distinct small business entities with NGOM permits in 2018 permits.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements. There are economic impacts to small entities associated with this action. Those impacts are described in detail in Framework 32, specifically, in the IRFA (Section 7.1.2) and in the Economic and Social Impacts section (Section 6.6).

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

During the development of Framework 32, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. For instance, Framework 32 implements flexible allocation in CAI. This was intended to provide flexibility to the fleet by allowing them to fish this allocation in either CAI or the MAAA. In addition, Framework 32 allows vessels to carry 2 additional crew members aboard both limited access full-time (10 in total) and limited access full-time small dredge vessels (8 in total). This gives a vessel the flexibility to add additional crew members to increase the shucking capacity and reach the possession limit in a time more consistent with other access areas. Alternatives to the measures in this final rule are described in detail in Framework 32, which includes an EA, RIR, and IRFA (see **ADDRESSES**). The measures implemented by this final rule minimize the long-term economic impacts on small entities to the extent practicable. The only alternatives for the prescribed catch limits that were analyzed were those that met the legal requirements to implement effective conservation measures. Specifically, catch limits must be derived using SSC-approved scientific calculations based on the Scallop FMP. Moreover, the limited number of alternatives available for this action must also be evaluated in the context of an ever-changing FMP, as the Council has considered numerous alternatives to mitigating measures every fishing year in amendments and frameworks since the establishment of the FMP in 1982.

Overall, this rule minimizes adverse long-term impacts by ensuring that management measures and catch limits result in sustainable fishing mortality rates that promote stock rebuilding, and as a result, maximize optimal yield. The measures implemented by this final rule also provide additional flexibility for fishing operations in the short-term.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as ''small entity compliance guides.'' The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a bulletin to permit holders that also serves as a small entity compliance guide was prepared. This final rule and the guide (*i.e.,* bulletin) will be sent via email to the Greater Atlantic Regional Fisheries Office scallop email list and are available on the website at: *http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scallop/.* Hard copies of the guide and this final rule will be available upon request (see **ADDRESSES**).

List of Subjects 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 25, 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 NORTHEAST UNITED STATES

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

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

Subpart A—General Provisions

■ 2. In § 648.4, revise paragraph (a)(2)(ii)(G)(*1*)(*ii*) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(2) * * *

(ii) * * *

(G) * * *

(*1*) * * *

(*ii*) *NGOM and Incidental scallop permit.* A vessel may be issued either an NGOM or Incidental scallop permit for each fishing year, and a vessel owner may not change his/her LAGC scallop permit category during the fishing year, except as specified in this paragraph (a)(2)(ii)(G)(*1*)(*ii*). The owners of a vessel issued a NGOM or Incidental scallop permit must elect a permit category in the vessel's permit application and shall have one opportunity each fishing year to request a change in its permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

* * * * *

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

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

* * * * *

(f) * * *

(4) * * *

(i) For trips greater than 24 hours, the owner or operator of a limited access or LAGC scallop vessel with an IFQ permit that fishes for, possesses, or retains scallops, and is not fishing under a NE Multispecies DAS or sector allocation, must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished, including open area trips, access area trips as described in § 648.59(b)(9), Northern Gulf of Maine RSA trips, and trips accompanied by a NMFS-certified observer. The reports must be submitted for each day (beginning at 0000 hr and ending at 2400 hr) and not later than 0900 hr of the following day. Such reports must include the following information:

(A) VTR serial number;

(B) Date fish were caught;

(C) Total pounds of scallop meats kept; and

(D) Total pounds of all fish kept.

* * * * *

■ 4. In § 648.14:

■ a. Add paragraphs (i)(1)(iii)(A)(*4*) and (*5*);

■ b. Remove paragraph (i)(1)(iv)(E) and remove and reserve paragraph (i)(3)(i)(B); and

■ c. Revise paragraph (i)(4)(i)(G).

The additions and revision read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(iii) * * *

(A) * * *

(*4*) Fish for, possess, or retain scallops in Federal waters of the NGOM management area on a vessel that has been issued and carries on board a NGOM permit and has declared into the state waters fishery of the NGOM management area.

(*5*) Fish for, possess, or retain scallops in the Stellwagen Bank Scallop Closed Area, as described in § 648.62(e), unless transiting the area and the vessel's fishing gear is stowed and not available for immediate use as defined in § 648.2.

* * * * *

(4) * * *

(i) * * *

(G) Fish for, possess, or land more than 40 lb (18.1 kg) of shucked scallops, or 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line, or 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line, when the vessel is not declared into the IFQ scallop fishery, unless the vessel is fishing in compliance with all of the requirements of the state waters exemption program, specified at § 648.54, or on a properly declared NE multispecies, surfclam, or ocean quahog trip (or other fishery requiring a VMS declaration) and not fishing in a scallop access area.

* * * * *

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

■ 5. In § 648.51:

■ a. Add paragraph (c)(1);

■ b. Remove the semicolon at the end of paragraph (c)(2) and add a period in its place; and

■ c. Add paragraph (e)(3)(iv).

The additions read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(c) * * *

(1) A vessel fishing in the Nantucket Lightship-South-Deep Access Area, as described in § 648.60(e), may have no more than 10 people aboard, including the operator, when not docked or moored in port.

* * * * *

(e) * * *

(3) * * *

(iv) A vessel fishing in the Nantucket Lightship-South-Deep Access Area, as described in § 648.60(e), may have no more than 8 people aboard, including the operator, when not docked or moored in port.

* * * * *

■ 6. In § 648.52, revise paragraphs (b) and (c) to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(b) A vessel issued an NGOM scallop permit, or an IFQ scallop permit that is declared into the NGOM scallop fishery as described in § 648.62, unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 200 lb (90.7 kg) of shucked scallops, or possess more than 25 bu (8.81 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS demarcation line on a properly declared NGOM scallop fishery trip.

(c) A vessel issued an Incidental scallop permit, or an IFQ scallop permit that is not declared into the IFQ scallop fishery or on a properly declared NE multispecies, surfclam, or ocean quahog trip or other fishery requiring a VMS declaration as required under § 648.10(f), unless exempted under the state waters exemption program described under § 648.54, may not possess or land, per trip, more than 40 lb (18.1 kg) of shucked scallops, or possess more than 5 bu (1.76 hL) of in-shell scallops shoreward of the VMS Demarcation Line. Such a vessel may land scallops only once in any calendar day. Such a vessel may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

* * * * *

■ 7. In § 648.53, revise paragraphs (a)(8), (b)(3), and (h)(5)(i) to read as follows:

§ 648.53 Overfishing limit (OFL), acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), annual projected landings (APL), DAS allocations, and individual fishing quotas (IFQ).

(a) * * *

(8) *Scallop fishery catch limits.* The following catch limits will be effective for the 2020 and 2021 fishing years:

TABLE 1 TO PARAGRAPH (a)(8)—SCALLOP FISHERY CATCH LIMITS

Catch limits	2020 (mt)	2021 (mt) [1]
Overfishing Limit	56,186	47,503
Acceptable Biological Catch/ACL (discards removed)	45,414	36,435
Incidental Catch	23	23
Research Set-Aside (RSA)	567	567
Observer Set-Aside	454	364
ACL for fishery	44,370	35,481
Limited Access ACL	41,930	33,530
LAGC Total ACL	2,440	1,951
LAGC IFQ ACL (5 percent of ACL)	2,219	1,774
Limited Access with LAGC IFQ ACL (0.5 percent of ACL)	222	177
Limited Access ACT	37,819	30,242
APL (after set-asides removed)	22,370	(1)
Limited Access Projected Landings (94.5 percent of APL)	21,140	(1)
Total IFQ Annual Allocation (5.5 percent of APL) [2]	1,230	923
LAGC IFQ Annual Allocation (5 percent of APL) [2]	1,119	839
Limited Access with LAGC IFQ Annual Allocation (0.5 percent of APL) [2]	112	84

[1] The catch limits for the 2021 fishing year are subject to change through a future specifications action or framework adjustment. This includes the setting of an APL for 2021 that will be based on the 2020 annual scallop surveys. The 2021 default allocations for the limited access component are defined for DAS in paragraph (b)(3) of this section and for access areas in § 648.59(b)(3)(i)(B).

[2] As specified in paragraph (a)(6)(iii)(B) of this section, the 2021 IFQ annual allocations are set at 75 percent of the 2020 IFQ Annual Allocations.

(b) * * *

(3) *DAS allocations.* The DAS allocations for limited access scallop vessels for fishing years 2020 and 2021 are as follows:

TABLE 2 TO PARAGRAPH (b)(3)—SCALLOP OPEN AREA DAS ALLOCATIONS

Permit category	2020	2021 [1]
Full-Time	24.00	18.00
Part-Time	9.60	7.20
Occasional	2.00	1.5

[1] The DAS allocations for the 2021 fishing year are subject to change through a future specifications action or framework adjustment. The 2021 DAS allocations are set at 75 percent of the 2020 allocation as a precautionary measure.

* * * * *

(h) * * *

(5) * * *

(i) *Temporary IFQ transfers.* Subject to the restrictions in paragraph (h)(5)(iii) of this section, the owner of an IFQ scallop vessel (and/or IFQ scallop permit in confirmation of permit history) not issued a limited access scallop permit may temporarily transfer (*e.g.,* lease) its entire IFQ allocation, or a portion of its IFQ allocation, to another IFQ scallop vessel. Temporary IFQ transfers shall be effective only for the fishing year in which the temporary transfer is requested and processed. IFQ can be temporarily transferred more than once (*i.e.,* re-transferred). For example, if a vessel temporarily transfers IFQ to a vessel, the transferee vessel may re-transfer any portion of that IFQ to another vessel. There is no limit on how many times IFQ can be re-transferred in a fishing year. The Regional Administrator has final approval authority for all temporary IFQ transfer requests.

* * * * *

■ 8. In § 648.59, revise paragraphs (b)(3)(i)(B), (b)(3)(ii), (c), (e), and (g)(3)(v) to read as follows:

§ 648.59 Sea Scallop Rotational Area Management Program and Access Area Program requirements.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) The following access area allocations and possession limits for limited access vessels shall be effective for the 2020 and 2021 fishing years:

(*1*) *Full-time vessels.* (*i*) For a full-time limited access vessel, the possession limit and allocations are:

TABLE 1 TO PARAGRAPH (b)(3)(i)(B)(*1*)(*i*)

Rotational access area	Scallop possession limit	2020 Scallop allocation	2021 Scallop allocation (default)
Closed Area I Flex [1]	18,000 lb (8,165 kg) per trip	9,000 lb (4,082 kg)	0 lb (0 kg).
Closed Area II		18,000 lb (8,165 kg)	0 lb (0 kg).

TABLE 1 TO PARAGRAPH (b)(3)(i)(B)(*1*)(*i*)—Continued

Rotational access area	Scallop possession limit	2020 Scallop allocation	2021 Scallop allocation (default)
Nantucket Lightship-North		9,000 lb (4,082 kg)	0 lb (0 kg).
Nantucket Lightship-South-Deep		18,000 lb (8,165 kg)	0 lb (0 kg).
Mid-Atlantic		36,000 lb (16,329 kg)	18,000 lb (8,165 kg).
Total		90,000 lb (40,823 kg)	18,000 lb (8,165 kg).

[1] Closed Area I flex allocation can be landed from either Closed Area I or the Mid-Atlantic Access Area pursuant to the area boundaries defined § 648.60(c).

(*ii*) For the 2019 fishing year and the first 60 days of the 2020 fishing year, a full-time limited access vessel may choose to land up to 18,000 lb (8,165 kg) of its Closed Area I Access Area allocation from any access area made available in the 2019 fishing year as described in the § 648.60. For example, a vessel could take a trip in the Closed Area I Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 8,000 lb (3,629 kg) of the Closed Area I flex allocation available, which could be landed from any other available access area as described in this section, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

(iii) For the 2020 fishing year and the first 60 days of the 2021 fishing year, a full-time limited access vessel may choose to land its Closed Area I Access Area allocation from either Closed Area I or the Mid-Atlantic Access Area as described in the § 648.60(c) and (a), respectively. For example, a vessel could take a trip in the Closed Area I Access Area and land 5,000 lb (2,268 kg) from that area, leaving the vessel with 4,000 lb (1,814 kg) of the Closed Area I flex allocation available, which could be landed from the Mid-Atlantic Access Area as described in this section, provided the 18,000-lb (8,165-kg) possession limit is not exceeded on any one trip.

(*iv*) If implementation of the fishing year 2020 specifications is delayed beyond April 1, 2020, the start of the 2020 fishing year, any full-time limited access vessel that harvests any portion of its default 2020 Nantucket Lightship-West Access Area allocation, as described in the § 648.60(f), will have 18,000 lb deducted from its fishing year 2020 Closed Area II Access Area allocation.

(*2*) *Part-time vessels.* (*i*) For a part-time limited access vessel, the possession limit and allocations are as follows:

TABLE 2 TO PARAGRAPH (b)(3)(i)(B)(*2*)(*i*)

Rotational access area	Scallop possession limit	2020 Scallop allocation	2021 Scallop allocation (default)
Closed Area II	12,000 lb (5,443 kg) per trip	12,000 lb (5,443 kg)	0 lb (0 kg)
Mid-Atlantic		24,000 lb (10,886 kg)	7,200 lb (3,266 kg)
Total		36,000 lb (16,329 kg)	7,200 lb (3,266 kg)

(*ii*) For the 2019 fishing year and the first 60 days of the 2020 fishing year, a part-time limited access vessel may choose to land up to 17,000 lb (7,711 kg) of its Closed Area I Access Area allocation from any access area made available in the 2019 fishing year as described in the § 648.60(a), (c), and (f). For example, a vessel could take a trip in the Closed Area I Access Area and land 10,000 lb (4,536 kg) from that area, leaving the vessel with 7,000 lb (3,175 kg) of the Closed Area I flex allocation available, which could be landed from any other available access area as described in this section, provided the possession limit is not exceeded on any one trip.

(*iii*) If implementation of fishing year 2020 specifications is delayed beyond the April 1, 2020, start of the 2020 fishing year, any part-time limited access vessel that harvests any portion of its default 2020 Nantucket Lightship-West Access Area allocation, as described in the § 648.60(f), will have 12,000 lb (5,443 kg) deducted from its fishing year 2020 Closed Area II Access Area allocation.

(*3*) *Occasional limited access vessels.* (*i*) For the 2020 fishing year only, an occasional limited access vessel is allocated 7,500 lb (3,402 kg) of scallops with a trip possession limit at 7,500 lb of scallops per trip (3,402 kg per trip). Occasional limited access vessels may harvest the 7,500 lb (3,402 kg) allocation from only the Mid-Atlantic Access Area.

(*ii*) For the 2021 fishing year, occasional limited access vessels are allocated 1,500 lb (680 kg) of scallops in the Mid-Atlantic Access Area only with a trip possession limit of 1,500 lb of scallops per trip (680 kg per trip).

(ii) *Limited access vessels' one-for-one area access allocation exchanges*—(A) *Full-time limited access vessels.* (*1*) The owner of a vessel issued a full-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only in 9,000-lb (4,082-kg) increments. For example, a full-time vessel may exchange 9,000 lb (4,082 kg) from one access area for 9,000 lb (4,082 kg) allocated to another full-time vessel for another access area. Further, a full-time vessel may exchange 18,000 lb (8,165 kg) from one access area for 18,000 lb (8,165 kg) allocated to another full-time vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A vessel owner may exchange equal allocations in 9,000-lb (4,082-kg) increments between two or more vessels of the same permit category under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(*2*) In fishing year 2020, full-time limited access vessels are allocated 9,000 lb (4,082 kg) of scallops that may be landed from either Closed Area I or the Mid-Atlantic Access Area as described in the § 648.60(c) and (a), respectively. This flex allocation may be exchanged in full for another access area allocation, but only the flex allocation may be landed from either Closed Area I or the Mid-Atlantic Access Area. For example, if a Vessel A exchanges 9,000 lb (4,082 kg) of Closed Area I flex allocation for 9,000 lb (4,082 kg) of Nantucket Lightship-North allocation with Vessel B, Vessel A would no longer be allowed to land this allocation from the Mid-Atlantic Access Area and may only land this allocation from Nantucket Lightship-North, but Vessel B could land the flex allocation from either Closed Area I or the Mid-Atlantic Access Area.

(B) *Part-time limited access vessels.* The owner of a vessel issued a part-time limited access scallop permit may exchange unharvested scallop pounds allocated into one access area for another part-time vessel's unharvested scallop pounds allocated into another scallop access area. These exchanges may be made only for the amount of the current trip possession limit, as specified in paragraph (b)(3)(i)(B)(*2*) of this section. For example, if the access area trip possession limit for part-time limited access vessels is 12,000 lb (5,443 kg), a part-time limited access vessel may exchange no more or less than 12,000 lb (5,443 kg), from one access area for no more or less than 12,000 lb (5,443 kg) allocated to another vessel for another access area. In addition, these exchanges may be made only between vessels with the same permit category: A full-time limited access vessel may not exchange allocations with a part-time vessel, and vice versa. Vessel owners must request these exchanges by submitting a completed Access Area Allocation Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Exchange forms are available from the Regional Administrator upon request. Each vessel owner involved in an exchange is required to submit a completed Access Area Allocation Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has enough unharvested allocation remaining in a given access area to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the allocation exchange has been made effective. A part-time limited access vessel owner may exchange equal allocations up to the current possession limit between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange allocations between another vessel and the vessel for which a Confirmation of Permit History has been issued.

* * * * *

(c) *Scallop Access Area scallop allocation carryover.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(2)(i)(J) for the entire fishing year preceding the carry-over year, a limited access scallop vessel operator may fish any unharvested Scallop Access Area allocation from a given fishing year within the first 60 days of the subsequent fishing year if the Scallop Access Area is open, unless otherwise specified in this section. However, the vessel may not exceed the Scallop Rotational Area trip possession limit. For example, if a full-time vessel has 7,000 lb (3,175 kg) remaining in the Mid-Atlantic Access Area at the end of fishing year 2019, that vessel may harvest those 7,000 lb (3,175 kg) during the first 60 days that the Mid-Atlantic Access Area is open in fishing year 2020 (April 1, 2020 through May 30, 2020).

* * * * *

(e) *Sea Scallop Research Set-Aside Harvest in Scallop Access Areas.* Unless otherwise specified, RSA may be harvested in any access area that is open in a given fishing year, as specified through a specifications action or framework adjustment and pursuant to § 648.56. The amount of scallops that can be harvested in each access area by vessels participating in approved RSA projects shall be determined through the RSA application review and approval process. The access areas open for RSA harvest for fishing years 2020 and 2021 are:

(1) 2020: Mid-Atlantic Access Area.

(2) 2021: No access areas.

* * * * *

(g) * * *

(3) * * *

(v) *LAGC IFQ access area allocations.* The following LAGC IFQ access area trip allocations will be effective for the 2020 and 2021 fishing years:

TABLE 3 TO PARAGRAPH (g)(3)(v)

Scallop access area	2020	2021[1]
Closed Area I	571	0
Nantucket Lightship-North	571	0
Nantucket Lightship-South-Deep	571	0
Mid-Atlantic	1,142	571
Total	2,855	571

[1] The LAGC IFQ access area trip allocations for the 2021 fishing year are subject to change through a future specifications action or framework adjustment.

* * * * *

■ 9. Revise § 648.60 to read as follows:

§ 648.60 Sea Scallop Rotational Areas.

(a) *Mid-Atlantic Scallop Rotational Area.* The Mid-Atlantic Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 1 TO PARAGRAPH (a)

Point	N latitude	W longitude
MAA1	39°30′	73°10′
MAA2	39°30′	72°30′
MAA3	38°30′	73°30′
MAA4	38°10′	73°30′
MAA5	38°10′	74°20′
MAA6	38°50′	74°20′
MAA7	38°50′	73°42′
MAA1	39°30′	73°10′

(b) *Closed Area II—Southwest and Extension Scallop Rotational Area.* The Closed Area II-Southwest and Extension Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 2 TO PARAGRAPH (b)

Point	N latitude	W longitude	Note
CAIISWE1	41°11′	67°20′	
CAIISWE2	41°11′	66°41′	
CAIISWE3	41°0′	66°41′	
CAIISWE4	41°0′	(1)	(2)
CAIISWE5	40°40′	(3)	(2)
CAIISWE6	40°40′	67°20′	
CAIISWE1	41°11′	67°20′	

1 The intersection of 41°0′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°0′ N lat. and 66°09.33′ W long.
2 From Point CAIISWE 4 connected to Point CAIISWE5 along the U.S.-Canada Maritime Boundary.
3 The intersection of 40°40′ N lat. and the U.S.-Canada Maritime Boundary, approximately 40°40′ N lat. and 65°52.61′ W long.

(c) *Closed Area I Scallop Rotational Area.* The Closed Area I Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 3 TO PARAGRAPH (c)

Point	N latitude	W longitude
CAIA1	41°30′	68°30′
CAIA2	40°58′	68°30′
CAIA3	40°54.95′	68°53.37′
CAIA4	41°04′	69°01′
CAIA5	41°30′	69°23′
CAIA1	41°30′	68°30′

(d) *Closed Area II Scallop Rotational Area*—(1) *Closed Area II Scallop Rotational boundaries.* The Closed Area II Scallop Rotational Area is defined by straight lines, except where noted, connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 4 TO PARAGRAPH (d)(1)

Point	N latitude	W longitude	Note
CAIIA1	41°30′	67°20′	
CAIIA2	41°11′	67°20′	
CAIIA3	41°11′	66°41′	
CAIIA4	41°00′	66°41′	
CAIIA5	41°00′	(1)	(2)
CAIIA6	41°30′	(3)	(2)
CAIIA1	41°30′	67°20′	

1 The intersection of 41°00′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°00′ N lat. and 66°09.33′ W long.
2 From Point CAIIA5 connected to Point CAIIA6 along the U.S.-Canada Maritime Boundary.
3 The intersection of 41°30′ N lat. and the U.S.-Canada Maritime Boundary, approximately 41°30′ N lat., 66°34.73′ W long.

(2) *Season.* (i) A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Rotational Area, defined in paragraph (d)(1) of this section, during the period of August 15 through November 15 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to § 648.59(a).

(ii) For the 2020 scallop fishing year, a vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Rotational Area, defined in paragraph (d)(1) of this section, during the period of November 16 through November 30, unless transiting pursuant to § 648.59(a).

(e) *Nantucket Lightship-South-Deep Scallop Rotational Area.* The Nantucket Lightship South-Deep Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 5 TO PARAGRAPH (e)

Point	N latitude	W longitude
NLSSD1	40°22′	69°30′
NLSSD2	40°15′	69°30′
NLSSD3	40°15′	69°00′
NLSSD4	40°28′	69°00′
NLSSD5	40°28′	69°17′
NLSSD1	40°22′	69°30′

(f) *Nantucket Lightship West Scallop Rotational Area.* From April 1, 2020 through May 30, 2020, the Nantucket Lightship West Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 6 TO PARAGRAPH (f)

Point	N latitude	W longitude
NLSW1	40°20′	70°00′
NLSW2	40°43.44′	70°00′
NLSW3	40°43.44′	69°30′
NLSW4	40°20′	69°30′
NLSW1	40°20′	70°00′

(g) *Nantucket Lightship-North Scallop Rotational Area.* The Nantucket Lightship North Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 7 TO PARAGRAPH (g)

Point	N latitude	W longitude
NLSN1	40°50′	69°30′
NLSN2	40°50′	69°00′
NLSN3	40°28′	69°00′
NLSN4	40°28′	69°30′
NLSN1	40°50′	69°30′

(h) *Nantucket Lightship-Triangle Scallop Rotational Area.* The Nantucket Lightship Triangle Scallop Rotational Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 8 TO PARAGRAPH (h)

Point	N latitude	W longitude
NLST1	40°28′	69°30′
NLST2	40°28′	69°17′
NLST3	40°22′	69°30′
NLST1	40°28′	69°30′

■ 10. In § 648.62, revise paragraph (b)(1) and add paragraph (e) to read as follows:

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

* * * * *

(b) * * *

(1) The LAGC and the limited access portions of the annual hard TAC for the NGOM 2020 and 2021 fishing years are as follows:

TABLE 1 TO PARAGRAPH (b)(1)

Fleet	2020		2021 (default)	
	lb	kg	lb	kg
LAGC	206,282	93,567	167,500	75,977
Limited access	140,000	63,503	97,500	44,225
Total	346,282	157,071	265,000	120,202

* * * * *

(e) *Stellwagen Bank Scallop Closed Area.* (1) From April 1, 2020 through March 31, 2022, unless a vessel has fished for scallops outside of the Stellwagen Bank scallop management area and is transiting the area with all fishing gear stowed and not available for immediate use as defined in § 648.2, no vessel issued a Federal scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the Stellwagen Bank Scallop Closed Area.

(2) From April 1, 2020 through March 31, 2022, the Stellwagen Bank Scallop Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

TABLE 2 TO PARAGRAPH (e)(2)

Point	N latitude	W longitude
SB1	42°26′	70°27′
SB2	42°26′	70°15′
SB3	42°20′	70°15′
SB4	42°20′	70°27′
SB1	42°26′	70°27′

[FR Doc. 2020–06599 Filed 3–30–20; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 85, No. 62

Tuesday, March 31, 2020

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2427

[FLRA Docket No. 0–PS–38]

Notice of Opportunity To Comment on a Request for a General Statement of Policy or Guidance on Whether ''Zipper Clauses'' Are Mandatory Subjects of Bargaining

AGENCY: Federal Labor Relations Authority.

ACTION: Proposed issuance of a general statement of policy or guidance.

SUMMARY: The Federal Labor Relations Authority (Authority) solicits written comments on a request from the U.S. Office of Personnel Management (OPM) for a general statement of policy or guidance (general statement) holding that ''zipper clauses''—which are provisions that would foreclose or limit mid-term bargaining during the term of a collective-bargaining agreement (CBA)—are a mandatory subject of bargaining. Comments are solicited on whether the Authority should issue a general statement, and, if so, what the Authority's policy or guidance should be.

DATES: To be considered, comments must be received on or before April 30, 2020.

ADDRESSES: You may send comments, which must include the caption ''OPM (Petitioner), Case No. 0–PS–38,'' by one of the following methods:

- *Email: FedRegComments@flra.gov.* Include ''OPM (Petitioner), Case No. 0–PS–38'' in the subject line of the message.
- *Mail or Express Mail:* Emily Sloop, Chief, Case Intake and Publication, Federal Labor Relations Authority, Docket Room, Suite 200, 1400 K Street NW, Washington, DC 20424–0001.

Instructions: Do not mail or express mail written comments if they have been submitted via email. Interested persons who mail or express mail written comments must submit an original and 4 copies of each written comment, with any enclosures, on 8½ x 11 inch paper. Do not deliver your comments by hand, Federal Express, or courier.

FOR FURTHER INFORMATION CONTACT: Emily Sloop, Chief, Case Intake and Publication, Federal Labor Relations Authority, (202) 218–7740.

SUPPLEMENTARY INFORMATION: In Case No. 0–PS–38, OPM requests that the Authority issue a general statement concerning zipper clause provisions and whether such provisions are mandatory subjects of bargaining. Interested persons are invited to express their views in writing as to whether the Authority should issue a general statement and, if it does, what the Authority's policy or guidance should be.

Proposed Guidance

To Heads of Agencies, Presidents of Labor Organizations, and Other Interested Persons:

OPM has requested, under Section 2427.2(a) of the Authority's rules and regulations (5 CFR 2427.2(a)), that the Authority issue a general statement of policy or guidance addressing the negotiability of zipper clause provisions and whether such provisions are mandatory subjects of bargaining. OPM asserts that the Authority's precedent supports considering zipper clauses to be mandatory subjects of bargaining because such proposals clearly involve the parties' mid-term bargaining rights and obligations, which have been found to be mandatory subjects of bargaining. The Authority has held that mandatory subjects of bargaining are topics that are within the required scope of bargaining. *FDIC, Headquarters,* 18 FLRA 768, 771 (1985). Furthermore, any party may bargain to impasse over mandatory topics. *Id.*

Previously, judges of the D.C. Circuit have written separately to recognize the validity of zipper clauses. *FLRA* v. *IRS, Dep't of the Treasury,* 838 F.2d 567, 569–70 (D.C. Cir. 1988) (Edwards, J. and Silberman, J., concurring in denial of reh'g) (*IRS II*). They noted that the Authority's precedent established that ''a union may contractually agree to waive its right to initiate bargaining in general by a 'zipper clause,' '' *id.* at 570 (quoting *IRS,* 29 FLRA 162, 166 (1987)), and rejected an argument that the Authority's precedent established that zipper clauses are a permissive subject of bargaining. *Id.* In *NTEU* v. *FLRA,* the court found that ''all conditions of employment are presumed to be mandatory subjects of bargaining . . . unless the Act explicitly or by unambiguous implication vests in a party an unqualified right.'' 399 F.3d 334, 340 (D.C. Cir. 2005) (internal quotation marks omitted). Citing *IRS,* the court stated:

> [w]hile two members of this court have expressed their opinion that bargaining over a zipper clause may be mandatory, neither the FLRA nor our court has squarely addressed this issue. *See FLRA* v. *Internal Revenue Serv.,* 838 F.2d 567 (D.C. Cir.1988)(Edwards, J. and Silberman, J., concurring in denial of reh'g)(disputing that FLRA precedent established zipper clause as permissive subject of bargaining); *See also Interior,* 56 F.L.R.A. at 54 (declining to address negotiability of zipper clause).

Id. at 343.

On remand, in *NTEU,* 64 FLRA 156, 157–59 (2009), the Authority found that ''reopener clauses''—which are provisions that specify the conditions where a party may seek to negotiate over a term that is ''covered by'' a CBA—are a mandatory subject of bargaining because they relate to conditions of employment and seek to define the parties' mid-term bargaining rights and obligations.

Because the Authority has only recognized reopener clauses as mandatory subjects of bargaining, OPM contends that it is prevented from utilizing the Federal Service Impasses Panel (the Panel) when a union elects to not agree to zipper clauses during term negotiations for a new CBA. As support, OPM cites to *U.S. Department of HHS and NTEU,* 18 FSIP 077 (2019). In that case, the Panel declined to exercise jurisdiction over a zipper clause because the Union ''raised colorable questions'' regarding whether such clauses concern a permissive topic of bargaining.

OPM contends that the Authority's precedent regarding zipper and reopener clauses have created an inequality where only reopener clauses can be bargained to impasse. Therefore, parties seeking to include a zipper clause are disadvantaged during term bargaining and the Panel is precluded from considering the totality of the circumstances when deciding to limit or broaden mid-term bargaining. Therefore, OPM concludes that parties should be able to bargain zipper clauses to impasse. Furthermore, OPM argues that finding zipper clauses to be mandatory will avoid disputes during mid-term bargaining and reduce the number of unfair-labor-practice charges regarding actions taken pursuant to such clauses.

In its request, OPM asks the Authority to issue a general statement holding that:

1. Zipper clauses are a mandatory topic of bargaining and, therefore, parties may bargain to impasse regarding both reopener and zipper clauses.

Regarding the matters raised by OPM, the Authority invites written comments on whether issuance of a general statement of policy or guidance is warranted, under the standards set forth in Section 2427.5 of the Authority's rules and regulations (5 CFR 2427.5), and, if so, what the Authority's policy or guidance should be. Written comments must contain separate, numbered headings for each issue covered.

Dated: March 24, 2020.

Rebecca J. Osborne,

Federal Register Liaison and Deputy Solicitor.

[FR Doc. 2020–06456 Filed 3–30–20; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Doc. No. AMS–SC–19–0115; SC20–956–1 PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Walla Walla Sweet Onion Marketing Committee (Committee) to increase the assessment rate established for the 2020 and subsequent fiscal periods. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by June 1, 2020.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

http://www.regulations.gov. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724 or Email: *DaleJ.Novotny@usda.gov* or *GaryD.Olson@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, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 956, as amended (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon. Part 956 (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 Committee locally administers the Order and is comprised of producers and handlers of Walla Walla sweet onions operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Walla Walla sweet onion handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable Walla Walla sweet onions for the 2020 fiscal period 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 proposed rule would increase the assessment rate from $0.10 per 50-pound bag or equivalent of Walla Walla sweet onions handled, the rate that was established for the 2017 and subsequent fiscal periods, to $0.15 per 50-pound bag or equivalent of Walla Walla sweet onions handled for the 2020 and subsequent fiscal periods.

The Order provides authority for the Committee, 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 Committee's needs and with the costs of goods and services in their local area and are 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 2017 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of $0.10 per 50-pound bag or equivalent of Walla Walla sweet onions handled. That assessment rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 13, 2020, and unanimously recommended expenditures of $84,200 and an assessment rate of $0.15 per 50-pound bag or equivalent of Walla Walla sweet onions handled for the 2020 and subsequent fiscal periods. In comparison, last year's budgeted expenditures were $99,800. The proposed assessment rate of $0.15 is $0.05 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to provide adequate income, along with interest income and reserve funds, to cover all of the Committee's budgeted expenses for the 2020 fiscal period. Funds in the reserve are expected to be approximately $104,377 at the end of the 2020 fiscal period, which is within the Order's requirement of carrying over no more than approximately two years budgeted expenses.

The major expenditures recommended by the Committee for the 2020 year include $47,400 for administrative, $26,000 for promotions, $5,000 for travel, $5,000 for research, and $800 for miscellaneous expenses. Budgeted expenses for these items for the 2019 fiscal period were $47,400, $41,600, $5,000, $5,000, and $800 respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses, an estimated crop of 389,952 50-pound bag or equivalents of Walla Walla sweet onions, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at $58,493 (389,952 50-pound bags or equivalent multiplied by $0.15 assessment rate), along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses of $84,200. Funds in the reserve are estimated to be $104,377 at the end of the 2020 fiscal period.

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

Although this assessment rate would be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2020 budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by USDA.

Initial 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 proposed rule on small entities. Accordingly, AMS has prepared this initial 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 15 producers of Walla Walla sweet onions in the regulated area and approximately 11 handlers of Walla Walla sweet onions 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), the national average producer price for non-storage onions for the 2011–2015 marketing years ranged from $15.10 to $22.10 per hundredweight. The average over those years was approximately $18.30 per hundredweight, or $9.15 per 50-pound equivalent. NASS suspended reporting of non-storage onion prices in 2015 and no other more current third-party information regarding the producer price of sweet onions is available. Total production of Walla Walla sweet onions for the 2019 season was 414,880 50-pound bags or equivalent. Using the price range from the 2011–2015 years for which there is NASS data, the total 2019 farm gate value of the Walla Walla sweet onion crop could therefore be estimated to be between $6,264,688 and $9,168,848. Dividing the crop value by the estimated number of producers (15) yields an estimated average receipt per producer of between $417,646 and $611,257, which is well below the SBA threshold for small producers.

USDA Market News reported a free on board (FOB) average price of $26.25 per 50-pound bag or equivalent of Walla Walla sweet onions for the 2019 season. Multiplying this FOB price by total 2019 shipments of 414,880 50-pound bags or equivalent results in an estimated gross value of Walla Walla sweet onion shipments of $10,894,748. Dividing this figure by the number of handlers (11) yields estimated average annual handler receipts of $990,432, which is below the SBA threshold for small agricultural service firms. Therefore, using the above data, and assuming a normal distribution, the majority of producers and all of the handlers of Walla Walla sweet onions may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2020 and subsequent fiscal periods from $0.10 to $0.15 per 50-pound bag or equivalent of Walla Walla sweet onions. The Committee unanimously recommended 2020 expenditures of $84,200 and an assessment rate of $0.15 per 50-pound bag or equivalent of Walla Walla sweet onions. The proposed assessment rate of $0.15 per 50-pound bag or equivalent is $0.05 higher than the current rate. The volume of assessable Walla Walla sweet onions for the 2020 fiscal period is estimated to be 389,953 50-pound bags or equivalent. Thus, the $0.15 per 50-pound bag or equivalent rate should provide $58,493 in assessment income (389,953 multiplied by $0.15). Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for the 2020 fiscal year.

The major expenditures recommended by the Committee for the 2020 year include $47,400 for administrative, $26,000 for promotions, $5,000 for travel, $5,000 for research, and $800 for miscellaneous expenses. Budgeted expenses for these items in 2019 were $47,400, $41,600, $5,000, $5,000, and $800 respectively.

In recent years, the Committee has utilized reserve funds to partially fund its budgeted expenditures. The Committee recommended increasing the assessment rate to fully fund 2020 fiscal period budgeted expenditures without excessively drawing down the funds held in its reserve. This action would maintain the Committee's reserve balance at a level that the Committee believes is appropriate and is compliant with the provisions of the Order.

Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including maintaining the current assessment rate of $0.10 per 50-pound bag or equivalent, and increasing the assessment rate by a different amount. However, the Committee determined that the recommended assessment rate would fully fund budgeted expenses and avoid drawing down reserves at an unsustainable rate.

This proposed rule would increase 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, these costs would be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the Walla Walla sweet onion industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 13, 2020, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

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. 0581–0178 Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion 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.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this 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.

A 60-day comment period is provided to allow interested persons to respond to this proposed rule.

All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 956

Marketing agreements, Reporting and recordkeeping requirements, Walla Walla sweet onions.

For the reasons set forth in the preamble, 7 CFR part 956 is proposed to be amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

■ 1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 956.202 is revised to read as follows:

§ 956.202 Assessment rate.

On and after January 1, 2020, an assessment rate of $0.15 per 50-pound bag or equivalent is established for Walla Walla sweet onions.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–06496 Filed 3–30–20; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2020–0073]

Clarification of Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals Working at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on a draft regulatory issue summary (RIS) to reinforce the existing requirement that prior to granting or reinstating unescorted access (UA), or certifying unescorted access authorization (UAA) to non-immigrant foreign nationals for the purpose of performing work, licensees shall take reasonable steps to access reliable, independent sources of information, in addition to the information provided by the applicant, to verify the applicant's claimed non-immigration status.

DATES: Submit comments by April 30, 2020. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0073. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mark Resner, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–3680, email: *Mark.Resner@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0073 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0073.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The Regulatory Issue Summary 2020–XX, Clarification of Personnel Access Authorization Requirements for Non-Immigrant Foreign Nationals Working at Nuclear Power Plants is available in ADAMS under Accession No. ML20008D562.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2020–0073 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

The NRC, in collaboration with the Department of Homeland Security, has identified several instances where a licensee has failed to appropriately verify, in the case of foreign nationals seeking UA and/or UAA, that the claimed non-immigration status that the individual has provided is correct. Consequently, foreign nationals have been granted UA and UAA at United States nuclear power plants for the purpose of work using visa categories that do not permit foreign nationals to work in the United States.

The NRC issues RISs to communicate with stakeholders on a broad range of matters. This may include communication and clarification of NRC technical or policy positions on regulatory matters that have not been communicated to or are not broadly understood by the nuclear industry.

As noted in 83 FR 20858 (May 8, 2018), this document is being published in the Proposed Rules section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

Proposed Action

The NRC is requesting public comments on the draft RIS. The NRC staff will make a final determination regarding issuance of the RIS after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 24th day of March 2020.

For the Nuclear Regulatory Commission.

Lisa M. Regner,

Branch Chief, Operating Experience Branch, Division of Reactor Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–06473 Filed 3–30–20; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 354

RIN 3064–AF31

Parent Companies of Industrial Banks and Industrial Loan Companies

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking with request for public comment.

SUMMARY: The Federal Deposit Insurance Corporation is seeking comment on a proposed rule that would require certain conditions and commitments for each deposit insurance application approval, non-objection to a change in control notice, and merger application approval that would result in an insured industrial bank or industrial loan company becoming, after the effective date of any final rule, a subsidiary of a company that is not subject to consolidated supervision by the Federal Reserve Board. The proposed rule also would require that before any industrial bank or industrial loan company may become a subsidiary of a company that is not subject to consolidated supervision by the Federal Reserve Board, such company and the industrial bank or industrial loan company must enter into one or more written agreements with the Federal Deposit Insurance Corporation.

DATES: Comments will be accepted until June 1, 2020.

ADDRESSES: You may submit comments on the notice of proposed rulemaking using any of the following methods:

• *Agency Website: https://www.fdic.gov/regulations/laws/federal.* Follow the instructions for submitting comments on the agency website.

• *Email: comments@fdic.gov.* Include RIN 3064–AF31 on the subject line of the message.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

• *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal.*

FOR FURTHER INFORMATION CONTACT: Mark Flanigan, Senior Counsel, (202) 898–7426, *mflanigan@fdic.gov;* Catherine Topping, Counsel, (202) 898–3975, *ctopping@fdic.gov;* Gregory Feder, Counsel, (202) 898–8724, *gfeder@fdic.gov;* Joyce Raidle, Counsel, (202) 898–6763, *jraidle@fdic.gov;* Merritt Pardini, Counsel, (202) 898–6680, *mpardini@fdic.gov;* Kayce Seifert, Senior Attorney, (202) 898–3625, *kseifert@fdic.gov,* Legal Division; Don Hamm, Special Advisor, (202) 898–3528, *dhamm@fdic.gov;* Scott Leifer, Senior Review Examiner, (508) 698–0361, Extension 8027, *sleifer@fdic.gov,* Division of Risk Management Supervision.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The Federal Deposit Insurance Corporation (FDIC) monitors, evaluates, and takes necessary action to ensure the safety and soundness of State nonmember banks,[1] including industrial banks and industrial loan companies (together, industrial banks).[2] In granting

[1] *See* 12 U.S.C. 1811, 1818, 1821, 1831*o*–1, 1831*p*–1.

[2] Herein, the term ''industrial bank'' means any insured State-chartered bank that is an industrial bank, industrial loan company, or other similar institution that is excluded from the definition of ''bank'' in the Bank Holding Company Act pursuant to 12 U.S.C. 1841(c)(2)(H). State laws refer to both industrial loan companies and industrial banks. For purposes of this proposed rule, the FDIC is treating the two types of institutions as the same.

deposit insurance, issuing a non-objection to a change in control, or approving a merger, the FDIC must consider the factors listed in sections 6,[3] 7(j),[4] and 18(c),[5] respectively, of the Federal Deposit Insurance Act (FDI Act). As deposit insurer and as the appropriate Federal banking agency for industrial banks, the FDIC supervises industrial banks. A key part of its supervision is evaluating and mitigating the risks arising from the activities of the control parties and owners of insured industrial banks to ensure they do not threaten the safe and sound operations of those industrial banks or pose undue risk to the Deposit Insurance Fund (DIF).

Existing State and Federal laws allows both financial and commercial companies to own and control industrial banks. Congress expressly adopted an exception to permit such companies to own and control industrial banks, without becoming a bank holding company (BHC) under the Bank Holding Company Act (BHCA), as part of the Competitive Equality Banking Act of 1987 (CEBA).[6] The purpose of the proposed rule is to codify existing practices utilized by the FDIC to supervise industrial banks and their parent companies, to mitigate undue risk to the DIF that may otherwise be presented in the absence of Federal consolidated supervision [7] of an industrial bank and its parent company, and to ensure that the parent company that owns or controls an industrial bank serves as a source of financial strength for the industrial bank, consistent with section 38A of the FDI Act.[8]

In recent years, there has been renewed interest in establishing *de novo* institutions, including industrial banks. Proposals regarding industrial banks have presented unique risk profiles compared to traditional community bank proposals. These profiles have included potential owners that would not be subject to Federal consolidated supervision, affiliations with organizations whose activities are primarily commercial in nature, and non-community bank business models.[9] Some public comments regarding these proposals have argued that the current use of the charter inappropriately mixes banking and commerce and raises risk to the DIF as a result of a lack of Federal consolidated supervision over the parent company. Some commenters have requested that the FDIC impose a new moratorium on deposit insurance applications involving industrial banks.[10] Other commenters have supported the industrial bank charter citing the benefits of increased competition and the provision of financial services to underserved markets. These commenters further argue the charter poses no increased risk to the DIF.

Given the continuing evolution in the use of the industrial bank charter, the unique nature of applications seeking to establish *de novo* industrial banks, and the legitimate considerations raised by interested parties—both in support of and opposed to the industrial bank charter—the FDIC believes a rule formalizing and strengthening the FDIC's existing supervisory processes and policies that apply to parent companies of industrial banks that are not subject to Federal consolidated supervision is timely and appropriate. The proposed rule would also provide interested parties with transparency regarding the FDIC's practices when making determinations on filings involving industrial banks.

II. Background: Regulatory Approach and Market Environment

A. History

Industrial banks began as small State-chartered loan companies in the early 1900s to provide small loans to industrial workers. The industrial bank charter developed as an alternative to a traditional commercial bank charter because commercial banks generally were unwilling to offer uncollateralized loans to factory workers and other wage earners with moderate incomes. Industrial banks became the leading providers of consumer credit to this underserved market through the 1920s and 1930s. Over time, commercial banks expanded their consumer lending business and by the post-World War II period, industrial banks represented only a small segment of the consumer lending market.

Initially, many industrial banks did not accept any deposits and funded themselves instead by issuing investment certificates. However, the Garn-St. Germain Depository Institutions Act of 1982,[11] among other effects, made all industrial banks eligible for Federal deposit insurance. This expanded eligibility for Federal deposit insurance brought industrial banks under the supervision of both a State authority and the FDIC.[12] The chartering States gradually expanded the powers of their industrial banks so that today industrial banks generally have the same commercial and consumer lending powers as commercial banks.

Under the FDI Act, industrial banks are ''State banks'' [13] and all of the existing FDIC-insured industrial banks are ''State nonmember banks''.[14] As a result, their primary Federal regulator is the FDIC.[15] Each industrial bank is also regulated by its respective State chartering authority. The FDIC generally exercises the same supervisory and regulatory authority over industrial banks as it does over other State nonmember banks.

B. Industrial Bank Exclusion Under the BHCA

In 1987, Congress enacted CEBA, which exempted industrial banks from the definition of ''bank'' in the BHCA. As a result, parent companies that control industrial banks are not BHCs under the BHCA and are not subject to the BHCA's activities restrictions or FRB supervision and regulation. The industrial bank exemption in the BHCA therefore provides an avenue for commercial firms to own or control a bank. By contrast, BHCs and savings and loan holding companies are subject to Federal consolidated supervision by

[3] 12 U.S.C. 1816.

[4] 12 U.S.C. 1817(j).

[5] 12 U.S.C. 1828(c).

[6] Public Law 100–86, 101 Stat. 552 (Aug. 10, 1987).

[7] In the context of the proposed rule, ''Federal consolidated supervision'' refers to the supervision of a parent company and its subsidiaries by the Federal Reserve Board (FRB). Consolidated supervision of a bank holding company by the FRB encompasses the parent company and its subsidiaries, and allows the FRB to understand ''the organization's structure, activities, resources, and risks, as well as to address financial, managerial, operational, or other deficiencies before they pose a danger to the BHC's subsidiary depository institutions.'' *See* SR Letter 08–9, ''Consolidated Supervision of Bank Holding Companies and the Combined U.S. Operations of Foreign Banking Organizations'' (Oct. 16, 2008).

[8] 12 U.S.C. 1831*o*–1(b).

[9] *See* FDIC Deposit Insurance Applications, Procedures Manual Supplement, Applications from Non-Bank and Non-Community Bank Applicants, FIL–8–2020 (Feb. 10, 2020).

[10] In 2010, the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) imposed a three-year moratorium on new industrial bank charters that were owned or controlled by a commercial firm. This moratorium expired in July 2013. Historical information regarding moratoria on industrial bank filings is discussed later in this preamble in section II.

[11] Public Law 97–320, 96 Stat. 1469 (Oct. 15, 1982).

[12] Prior to 1982, the FDIC had allowed some industrial banks to become Federally insured, but FDIC insurance was typically limited to those industrial banks chartered by States where the relevant State's law allowed them to receive ''deposits'' or to use ''bank'' in their name. For additional historical context regarding industrial bank supervision, see *The FDIC's Supervision of Industrial Loan Companies: A Historical Perspective,* Supervisory Insights (2004).

[13] 12 U.S.C. 1813(a)(2).

[14] 12 U.S.C. 1813(e)(2).

[15] 12 U.S.C. 1813(q)(2).

the FRB and are generally prohibited from engaging in commercial activities.[16]

More specifically, CEBA redefined the term ''bank'' in the BHCA to include: (1) Any FDIC-insured institution, and (2) any other institution that accepts demand or checkable deposit accounts and is engaged in the business of making commercial loans.[17] This change effectively closed the so-called ''non-bank bank'' exception implicit in the prior BHCA definition of ''bank''. The CEBA created explicit exemptions from this definition for certain categories of Federally insured institutions, including industrial banks, credit card banks, and limited purpose trust companies. The exclusions from the definition of the term ''bank'' remain in effect today. To be eligible for the CEBA exemption from the BHCA definition of ''bank,'' an industrial bank must have received a charter from one of the limited number of States eligible to issue industrial bank charters, and the law of the chartering State must have required Federal deposit insurance as of March 5, 1987. In addition, an industrial bank must meet one of the following criteria: (i) Not accept demand deposits; [18] (ii) have total assets of less than $100 million; or (iii) have been acquired prior to August 10, 1987.[19]

Industrial banks are currently chartered in California, Hawaii, Minnesota, Nevada, and Utah. Under CEBA, these States were permitted to grandfather existing industrial banks and continue to charter new industrial banks.[20] Generally, industrial banks offer limited deposit products, a full range of commercial and consumer loans, and other banking services. Most industrial banks do not offer demand deposits. Negotiable order of withdrawal (NOW) accounts [21] may be offered by industrial banks.[22] Industrial banks have branching rights, subject to certain State law constraints.

C. Industry Profile

The industrial bank industry has evolved since the enactment of CEBA. The industry experienced significant asset growth between 1987 and 2006 when total assets held by industrial banks grew from $4.2 billion to $213 billion.[23] From 2000 to 2006, 24 industrial banks became insured.[24] As of January 30, 2007, there were 58 insured industrial banks with $177 billion in aggregate total assets.[25] The ownership structure and business models of industrial banks evolved as industrial banks were acquired or formed by a variety of commercial firms, including, among others, BMW, Target, Pitney Bowes, and Harley Davidson. For instance, certain companies established industrial banks, in part, to support the sale of the manufactured products (*e.g.* automobiles) or other services, whereas certain retailers established industrial banks to issue general purpose credit cards. In addition, certain financial companies also formed or acquired industrial banks to provide access to Federal deposit insurance for brokerage customers' cash management account balances. The cash balances their customers maintain with the securities affiliate are swept into insured, interest-bearing accounts at the industrial bank subsidiary, thereby providing the brokerage customers with FDIC-insured deposits.

Since 2007, the industrial bank industry has experienced contraction both in terms of the number of institutions and aggregate total assets. As of December 31, 2019, there were 23 industrial banks [26] with $141 billion in aggregate total assets. Four industrial banks reported total assets of $10 billion or more; eight industrial banks reported total assets of $1 billion or more but less than $10 billion. The industrial bank industry today includes a diverse group of insured financial institutions operating a variety of business models. A significant number of the 23 existing industrial banks support the commercial or specialty finance operations of their parent company and are funded through non-core sources.

The reduction in the number of industrial banks from 2007 to 2019 was due to a variety of factors, including mergers, conversions, voluntary liquidations, and the failure of two small institutions.[27] For business, marketplace, or strategic reasons, several existing industrial banks converted to commercial banks and thus became ''banks'' under the BHCA. Four industrial banks were approved in 2007 and 2008; however, none of those institutions exist today.[28] No other industrial banks have been established since 2008, largely due to moratoria imposed by the FDIC and Congress (as discussed below).

Since the beginning of 2017, the FDIC has received nine Federal deposit insurance applications related to proposed industrial banks. Of those, four have been withdrawn and five are pending.[29] None of the potential parent

[16] Section 4 of the BHCA generally prohibits a BHC from acquiring ownership or control of any company which is not a bank or engaging in any activity other than those of banking or of managing or controlling banks and other subsidiaries authorized under the Act. *See* 12 U.S.C. 1843(a)(1) and (2). The Home Owners' Loan Act (HOLA) governs the activities of savings and loan holding companies, as amended by the Dodd-Frank Act, which generally subjects these companies to the permissible financial holding company activities under 4(k) of the BHCA (12 U.S.C. 1843(k), activities that are financial in nature or incidental to a financial activity). *See* 12 U.S.C. 1467a(c)(2)(H).

[17] 12 U.S.C. 1841(c)(1).

[18] Regulation D implements the reserve requirements of section 19 of the Federal Reserve Act and defines a demand deposit as a deposit that is payable on demand, or issued with an original maturity or required notice period of less than seven days, or a deposit representing funds for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal. Demand deposits may be in the form of (i) checking accounts; (ii) certified, cashier's, teller's, and officer's checks; and (iii) traveler's checks and money orders that are primary obligations of the issuing institution. Other forms of accounts may also meet the definition of ''demand deposit''. *See* 12 CFR 204.2(b)(1).

[19] 12 U.S.C. 1841(c)(2)(H).

[20] Colorado was also grandfathered but it has no active industrial banks and has since repealed its industrial bank statute.

[21] A NOW account is an interest-earning bank account whereby the owner may write drafts against the money held on deposit. NOW accounts were developed when certain financial institutions were prohibited from paying interest on demand deposits. The prohibition on paying interest on demand deposits was lifted when the FRB repealed its Regulation Q, effective July 21, 2011. *See* 76 FR 42015 (July 18, 2011). Many provisions of the repealed Regulation Q were transferred to the FRB's Regulation D. *See* 12 CFR part 204.

[22] 12 U.S.C. 1832(a). Only certain types of customers may maintain deposits in a NOW account. 12 U.S.C. 1832(a)(2).

[23] Most of the growth during this period is attributable to financial services firms that controlled industrial banks offering sweep deposit programs to provide Federal deposit insurance for customers' free cash balances and to American Express moving its credit card operations from its Delaware-chartered credit card bank to its Utah-chartered industrial bank.

[24] During this time period, the FDIC received 57 applications for Federal deposit insurance for industrial banks, 53 of which were acted on. Also during this time period, 21 industrial banks ceased to operate due to mergers, conversions, voluntary liquidations, and one failure.

[25] Of the 58 industrial banks existing at this time, 45 were chartered in Utah and California. The remaining industrial banks were chartered in Colorado, Hawaii, Minnesota, and Nevada.

[26] Of the 23 industrial banks, 14 were chartered in Utah, four in Nevada, three in California, one in Hawaii, and one in Minnesota.

[27] Security Savings Bank, Henderson, Nevada failed in February 2009 and Advanta Bank Corporation, Draper, Utah failed in March 2010.

[28] In each case, the institution pursued a voluntary transaction that led to termination of the respective institution's industrial bank charter. One institution converted to a commercial bank charter and continues to operate, one merged and the resultant bank continues to operate, and two terminated deposit insurance following voluntary liquidations. Such transactions generally result from proprietary strategic determinations by the institutions and their parent companies or investors.

[29] Decisions to withdraw an application are made at the discretion of the organizers and can be attributed to a variety of reasons. In some cases, an

Continued

companies of the pending industrial bank applicants would be subject to Federal consolidated supervision. The FDIC anticipates potential continued interest in the establishment of industrial banks, particularly with regard to proposed institutions that plan to pursue a specialty or limited purpose business model.

D. Supervision

Because industrial banks are insured State nonmember banks, they are subject to the FDIC's Rules and Regulations, as well as other provisions of law, including restrictions under the Federal Reserve Act governing transactions with affiliates,[30] anti-tying provisions of the BHCA,[31] insider lending regulations, consumer protection laws and regulations, and the Community Reinvestment Act. Industrial banks are also subject to regular examination, including examinations focused on safety and soundness, Bank Secrecy Act and Anti-Money Laundering compliance, consumer protection, information technology (IT), and trust services, as appropriate. Pursuant to section 10(b)(4) of the FDI Act, the FDIC has the authority to examine the affairs of any industrial bank affiliate, including the parent company, as may be necessary to determine the relationship between the institution and the affiliate, and the effect of such relationship on the depository institution.[32]

As part of the Dodd-Frank Act,[33] Congress adopted section 38A of the FDI Act, which imposes a ''source of financial strength'' requirement on any company that directly or indirectly controls an insured depository institution and is otherwise exempt from the BHCA or the HOLA.[34] Consistent with section 38A and other authorities under the FDI Act, the FDIC has historically required capital and liquidity maintenance agreements and other written agreements between the FDIC and controlling parties of industrial banks as well as the imposition of prudential conditions when granting deposit insurance to an industrial bank or issuing a nonobjection to a change in control notice involving an industrial bank. Such written agreements provide required commitments for the parent company to provide financial resources and a means for the FDIC to pursue formal enforcement action under sections 8 and 50 of the FDI Act[35] should a party fail to comply with the agreements.

E. GAO and OIG Reports

Beginning in 2004, the FDIC Office of Inspector General (OIG) conducted two evaluations and the Government Accountability Office (GAO) conducted a statutorily mandated study regarding the FDIC's supervision of industrial banks, including its use of prudential conditions.[36] An OIG evaluation published in 2004 focused on whether industrial banks posed greater risk to the DIF than other financial institutions, and reviewed the FDIC's supervisory approach in identifying and mitigating material risks posed to those institutions by their parent companies. A July 2006 OIG evaluation reviewed the FDIC's process for reviewing and approving industrial bank applications for deposit insurance and monitoring conditions imposed with respect to industrial bank business plans. A September 2005 GAO study cited several risks posed to banks operating in a holding company structure, including adverse intercompany transactions, operations risk, and reputation risk. The GAO study also discussed concerns about the FDIC's ability to protect an industrial bank from those risks as effectively as the Federal consolidated supervisory approach under the BHCA.[37]

These reports acknowledged the FDIC's supervisory actions to ensure the independence and safety and soundness of commercially owned industrial banks. The reports further acknowledged the FDIC's authorities to protect an industrial bank from the risks posed by its parent company and affiliates. These authorities include the FDIC's authority to conduct examinations, impose conditions on and enter into agreements with an industrial bank parent company, terminate an industrial bank's deposit insurance, enter into agreements during the acquisition of an insured depository institution, and pursue enforcement actions.

F. FDIC Moratorium and Other Agency Actions

In 2005, Wal-Mart Bank's application for Federal deposit insurance generated considerable debate. The FDIC received more than 13,800 comment letters regarding Wal-Mart's proposal. Most of the commenters were opposed to the application. Commenters also raised broader concerns about industrial banks, including the risk posed to the DIF by industrial banks owned by holding companies that are not subject to Federal consolidated supervision. Similar concerns were expressed by witnesses during three days of public hearings held by the FDIC in the spring of 2006 concerning the Wal-Mart application. Also in 2006, The Home Depot filed a change in control notice in connection with its proposed acquisition of EnerBank, a Utah-chartered industrial bank. The FDIC received approximately 830 comment letters regarding this notice, almost all of which expressed opposition to the proposed acquisition. Ultimately, the Wal-Mart application and The Home Depot's notice were withdrawn.

To evaluate the concerns and issues raised with respect to the Wal-Mart and The Home Depot filings and industrial banks generally, on July 28, 2006, the FDIC imposed a six-month moratorium on FDIC action with respect to deposit insurance applications and change in control notices involving industrial banks.[38] The FDIC suspended agency action in order to further evaluate (i) industry developments; (ii) the various issues, facts, and arguments raised with respect to the industrial bank industry; (iii) whether there were emerging safety and soundness issues or policy issues involving industrial banks or other risks to the DIF; and (iv) whether statutory, regulatory, or policy changes should be made in the FDIC's oversight of industrial banks in order to protect the DIF or important Congressional objectives.[39]

In connection with this moratorium, on August 23, 2006, the FDIC published a Notice and Request for Comment on

application is withdrawn and then refiled after changes are incorporated into the proposal. In such cases, the new application is reviewed by the FDIC without prejudice. In other cases, the applicant may, for strategic reasons, determine that pursuing an insured industrial bank charter is not in the organizers' best interests.

[30] *See* 12 U.S.C. 1828(j)(1)(A).

[31] For purposes of section 106 of the BHCA, an industrial bank is treated as a ''bank'' and is subject to the anti-tying restrictions therein. *See* 12 U.S.C. 1843(f)(1).

[32] 12 U.S.C. 1820(b)(4).

[33] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[34] 12 U.S.C. 1831*o*–1(b).

[35] *See* 12 U.S.C. 1818 and 1831*aa.*

[36] *See* OIG Evaluation 04–048, *The Division of Supervision and Consumer Protection's Approach for Supervising Limited-Charter Depository Institutions* (2004), *https://www.fdicig.gov/reports04/04-048.pdf;* OIG Evaluation 06–014, *The FDIC's Industrial Loan Company Deposit Insurance Application Process* (2006), *https://www.fdicig.gov/reports06/06-014.pdf;* U.S. Gov't Accountability Office, GAO–05–621, *Industrial Loan Corporations: Recent Asset Growth and Commercial Interest Highlight Differences in Regulatory Authority* (Sept. 2005).

[37] U.S. Gov't Accountability Office, GAO–05–621, *Industrial Loan Corporations: Recent Asset Growth and Commercial Interest Highlight Differences in Regulatory Authority* (Sept. 2005).

[38] *See* Moratorium on Certain Industrial Loan Company Applications and Notices, 71 FR 43482 (Aug. 1, 2006).

[39] *Id.* at 43483.

a wide range of issues concerning industrial banks.[40] The FDIC received over 12,600 comment letters in response to this Notice.[41] The substantive comments related to the risk profile of the industrial bank industry, concerns over the mixing of banking and commerce, the FDIC's practices when making determinations in industrial bank applications and notices, whether commercial ownership of industrial banks should be allowed, and perceived needs for supervisory change.

The moratorium was effective through January 31, 2007, at which time the FDIC extended the moratorium one additional year for deposit insurance applications and change in control notices for industrial banks that would be owned by commercial companies.[42] This moratorium was not applicable to industrial banks to be owned by financial companies.

G. 2007 Notice of Proposed Rulemaking—Part 354

In addition to extending the moratorium for one year with respect to commercial parent companies, the FDIC published for comment a proposed rule designed to strengthen the FDIC's consideration of applications and notices for industrial banks to be controlled by financial companies not subject to Federal consolidated bank supervision, identified as Part 354 (2007 NPR).[43] The 2007 NPR would have imposed requirements on applications for deposit insurance, merger applications, and notices for change in control that would result in an industrial bank becoming a subsidiary of a company engaged solely in financial activities that is not subject to Federal consolidated bank supervision by either the FRB or the then-existing Office of Thrift Supervision (OTS). The rule would have established safeguards to assess the parent company's continuing ability to serve as a source of strength for the insured industrial bank, and identify and respond to problems or risks that may develop in the company or its subsidiaries.

In response to the 2007 NPR, the FDIC received 18 comment letters. The majority of commenters argued that the 2007 NPR should have also excluded parent companies supervised by other Federal regulators that provide similar oversight as the FRB and OTS, such as the Securities and Exchange Commission, to reduce the amount of duplicative regulation over these parent companies. Similarly, the commenters uniformly suggested that, to reduce the regulatory burden, the FDIC should defer to a parent company's primary regulator, which the commenters argued would be better suited to regulate the entity and better positioned to obtain relevant information. The majority of commenters also voiced opposition to limiting parent company representation on the industrial bank subsidiary's board of directors to 25 percent, and instead advocated for codifying the FDIC's informal standard of requiring a majority of directors to be independent.

Though the 2007 NPR did not affect industrial banks that would be controlled by companies engaged in commercial activities, several commenters addressed the distinction between industrial banks owned by financial and nonfinancial companies. Two commenters contended that the FDIC lacked authority to draw a distinction between financial and nonfinancial industrial bank owners absent a change in law. Several commenters argued that drawing such a distinction would essentially repeal the exemption of industrial banks from the definition of ''bank'' in the BHCA. There was little consensus among commenters as to whether commercially owned industrial banks pose unique safety and soundness issues.

Similar to this proposed rule, the 2007 NPR would have required a parent company to enter into a written agreement with the FDIC containing required commitments related to the examination of, and reporting and recordkeeping by, the industrial bank, the parent company, and its affiliates. The majority of commenters did not oppose these requirements, noting the FDIC already has authority to collect such information under section 10(b)(4) of the FDI Act.[44] The majority of commenters stated that the FDIC should not impose capital requirement commitments as contemplated in the 2007 NPR on commercial parents of industrial banks because of the idiosyncratic business models and operations of such companies.

H. Dodd-Frank Act and Industrial Banks

As discussed above, the Dodd-Frank Act amended the FDI Act by adding section 38A.[45] Under section 38A, for any insured depository institution that is not a subsidiary of a BHC or savings and loan holding company, the appropriate Federal banking agency for the insured depository institution must require any company that directly or indirectly controls such institution to serve as a source of financial strength for the institution.[46] As a result, the FDIC is required to impose a requirement on companies that directly or indirectly own or control an industrial bank to serve as a source of financial strength for that institution. In addition, subsection (d) of section 38A of the FDI Act provides explicit statutory authority for the appropriate Federal banking agency to require reports from a controlling company to assess the ability of the company to comply with the source of strength requirement, and to enforce compliance by such company.[47]

Through the Dodd-Frank Act, Congress also imposed a three-year moratorium on the FDIC's approval of deposit insurance applications for industrial banks that were owned or controlled by a commercial firm.[48] The Dodd-Frank Act moratorium also applied to the FDIC's approval of any change in control of an industrial bank that would place the institution under the control of a commercial firm.[49] The

[40] *See* Industrial Loan Companies and Industrial Banks, 71 FR 49456 (Aug. 23, 2006). The Notice included questions concerning the current risk profile of the industrial bank industry, safety and soundness issues uniquely associated with ownership of such institutions, the FDIC's practice with respect to evaluating and making determinations on industrial bank applications and notices, whether a distinction should be made when the industrial bank is owned by an entity that is commercial in nature, and the adequacy of the FDIC's supervisory approach with respect to industrial banks.

[41] Approximately 12,485 comments were generated either supporting or opposing the proposed industrial bank to be owned by Wal-Mart or the proposed acquisition of Enerbank, also an industrial bank, by The Home Depot. The remaining comment letters were sent by individuals, law firms, community banks, financial services trade associations, existing and proposed industrial banks or their parent companies, the Conference of State Bank Supervisors, and two members of Congress.

[42] *See* Moratorium on Certain Industrial Bank Applications and Notices, 72 FR 5290 (Feb. 5, 2007).

[43] *See* Industrial Bank Subsidiaries of Financial Companies 72 FR 5217 (Feb. 5, 2007); *see also https://www.fdic.gov/news/news/press/2007/pr07007.html.*

[44] *See* 12 U.S.C. 1820(b)(4).

[45] *See* 12 U.S.C. 1831*o*–1.

[46] 12 U.S.C. 1831*o*–1(b). This amendment also requires the appropriate Federal banking agency for a BHC or savings and loan holding company to require the BHC or savings and loan holding company to serve as a source of financial strength for any subsidiary of the BHC or savings and loan holding company that is a depository institution. 12 U.S.C. 1831*o*–1(a).

[47] *See* 12 U.S.C. 1831*o*–1(d).

[48] Public Law 111–203, title VI § 603(a), 124 Stat. 1597 (2010). Section 603(a) also imposed a moratorium on FDIC action on deposit insurance applications by credit card banks and trust banks owned or controlled by a commercial firm. The Dodd-Frank Act defined a ''commercial firm'' for this purpose as a company that derives less than 15 percent of its annual gross revenues from activities that are financial in nature, as defined in section 4(k) of the BHCA (12 U.S.C. 1843(k)), or from ownership or control of depository institutions.

[49] *Id.*

moratorium expired in July 2013, without any action by Congress.

In addition, the Dodd-Frank Act directed the GAO to conduct a study of the implications of removing all exemptions from the definition of ''bank'' under the BHCA. The GAO report was published in January of 2012.[50] This report examined the number and general characteristics of exempt institutions, the Federal regulatory system for such institutions, and potential implications of subjecting the holding companies of such institutions to BHCA requirements. The GAO report noted that the industrial bank industry experienced significant asset growth in the 2000s and, during this time, the profile of industrial banks changed: Rather than representing a class of small, limited-purpose institutions, industrial banks became a diverse group of insured institutions with a variety of business lines.[51] Ultimately, the GAO found that Federal regulation of the exempt institutions' parent companies varied, noting that FDIC officials interviewed in connection with the study indicated that supervision of exempt institutions was adequate, but also noted the added benefit of Federal consolidated supervision. Finally, data examined by the GAO suggested that removing the BHCA exemptions would likely have a limited impact on the overall credit market, chiefly because the overall market share of exempt institutions was, at the time of the study, small.

III. Need for Rulemaking and Rulemaking Authority

As discussed above, the 2007 NPR would have imposed certain conditions and requirements for approval of certain deposit insurance applications and nonobjections to change in control notices involving industrial banks. However, the FDIC did not finalize the 2007 NPR. Although multiple factors contributed to the FDIC's decision to not advance a final rule, the most significant factor was the onset of the financial crisis. With the advent of the crisis, applications to form *de novo* insured institutions, or to acquire existing institutions, declined significantly, including with respect to industrial banks. Further, provisions included in the 2007 NPR, which reflected the FDIC's practices beginning in 2005 with respect to proposed *de novo* industrial banks, were being tested in an adverse economic environment for the first time. As such, embodying the provisions in a final rule would have been premature without knowledge of the consequences of the rule's requirements and restrictions.

The crisis demonstrated that the FDIC's supervisory approach with respect to industrial banks was effective. Only two industrial banks failed during the crisis, and both failures were of small industrial banks that did not present circumstances raising concern with respect to industrial banks proposed prior to the crisis. Several industrial banks and their parent companies pursued conversions to commercial banks and BHC structures for financial and strategic reasons.

Recently, a number of companies have considered options for providing financial products and services through establishing an industrial bank subsidiary. Many companies have publicly noted the benefits of deposit insurance and establishing a deposit-taking institution. Although many interested parties operate business models focused on traditional community bank products and services, others operate unique business models, some of which are focused on innovative technologies and strategies.

Some of the companies recently exploring an industrial bank charter engage in commercial activities or have diversified business operations and activities that would not otherwise be permissible for BHCs under the BHCA and applicable regulations. Given the continuing evolution of the industrial bank charter, the utility of codifying certain supervisory requirements for industrial banks, the nature of entities interested in *de novo* industrial banks, the statutory changes enacted in the Dodd-Frank Act that clearly address the source of financial strength obligations of any company that controls an industrial bank, as well as the legitimate considerations raised by interested parties, the FDIC believes a rule is appropriate to provide necessary transparency for market participants. Through the proposed rule, the FDIC would formalize its framework to supervise industrial banks and mitigate risk to the DIF that may otherwise be presented in the absence of Federal consolidated supervision of an industrial bank and its parent company.

The FDIC has the authority to issue rules to carry out the provisions of the FDI Act,[52] including rules to ensure the safety and soundness of industrial banks and to protect the DIF. Moreover, as the only agency with the power to grant or terminate deposit insurance, the FDIC has a unique responsibility for the safety and soundness of all insured institutions.[53] In granting deposit insurance, the FDIC must consider the factors in section 6 of the FDI Act;[54] these factors generally focus on the safety and soundness of the proposed institution and any risk it may pose to the DIF. The FDIC is also authorized to permit or deny various transactions by State nonmember banks, including merger and change in bank control transactions, based to a large extent on safety and soundness considerations and on its assessment of the risk to the DIF.[55]

The FDIC has the responsibility to consider filings based on statutory criteria and make decisions. The proposed rule generally would codify the FDIC's current supervisory processes and policies with respect to industrial banks that would not be subject to Federal consolidated supervision. The proposed rule also includes additional safeguards the FDIC believes are appropriate based on its experience, such as requiring a tax allocation agreement.

IV. Description of the Proposed Rule

A. Section 354.1—Scope

This section describes the industrial banks and parent companies that would be subject to the proposed rule. The proposed rule would apply to industrial banks that, as of the effective date, become subsidiaries of companies that are Covered Companies, as such term is defined in § 354.2. Industrial bank subsidiaries of companies that are subject to Federal consolidated supervision by the FRB would not be covered by the proposed rule. An industrial bank that, on or before the effective date, is a subsidiary of a company that is not subject to Federal consolidated supervision by the FRB (a grandfathered industrial bank) generally

[50] *See* U.S. Government Accountability Office, GAO–12–160, *Characteristics and Regulation of Exempt Institutions and the Implications of Removing the Exemptions* (Jan. 2012).

[51] *Id.* at 13.

[52] ''[T]he Corporation . . . shall have power . . . [t]o prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this chapter or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).'' 12 U.S.C. 1819(a)(Tenth).

[53] *See* 12 U.S.C. 1815, 1818(a).

[54] Such factors are the financial history and condition of the depository institution, the adequacy of the depository institution's capital structure, the future earnings prospects of the depository institution, the general character and fitness of the management of the depository institution, the risk presented by such depository institution to the DIF, the convenience and needs of the community to be served by such depository institution, and whether the depository institution's corporate powers are consistent with the purposes of the FDI Act. *See* 12 U.S.C. 1816.

[55] *See* 12 U.S.C. 1817(j), 1828(c), and 1828(d).

would not be covered by the proposed rule.[56] A grandfathered industrial bank could become subject to the proposed rule following a change in control, merger, or grant of deposit insurance occurring after the effective date in which the resulting institution is an industrial bank that is a subsidiary of a Covered Company. Thus, a grandfathered industrial bank would be subject to the proposed rule, as would its parent company that is not subject to Federal consolidated supervision, if such a parent company acquired control of the grandfathered industrial bank pursuant to a change in bank control transaction that closes after the effective date, or if the grandfathered industrial bank is the surviving institution in a merger transaction that closes after the effective date. Industrial banks that are not subsidiaries of a company, for example, those wholly owned by one or more individuals, would not be subject to the proposed rule.

Question 1: Should the proposed rule apply only prospectively, that is, to industrial banks that become a subsidiary of a parent company that is a Covered Company? Or should the proposed rule also apply to all industrial banks that, as of the effective date, are a subsidiary of a parent that is not subject to Federal consolidated supervision by the FRB? What are the concerns with each approach?

Question 2: Should the proposed rule apply to industrial banks that do not have a parent company? How should the rule be applied in such a case?

Question 3: Should the proposed rule apply to industrial banks that are controlled by an individual rather than a company?

Question 4: If an individual controls the parent company of an industrial bank, should the individual be responsible for the maintenance of the industrial bank's capital and liquidity at or above FDIC-specified levels? Should an individual who controls a parent company be responsible for causing the parent company to comply with the written agreements, commitments, and restrictions imposed on the industrial bank? How should the rule be applied in such a case?

B. Section 354.2—Definitions

This section lists the definitions that would apply to part 354. Terms that are not defined in the proposed rule that are defined in section 3 of the FDI Act have the meanings given in section 3 of the FDI Act.[57]

The term ''control'' would be defined to mean the power, directly or indirectly, to direct the management or policies of a company or to vote 25 percent or more of any class of voting securities of a company and specifically would include the rebuttable presumption of control at 12 CFR 303.82(b)(1) and the presumptions of acting in concert at 12 CFR 303.82(b)(2) in the same manner and to the same extent as if they applied to an acquisition of securities of a company instead of a ''covered institution''. These definitions are nearly the same as the definitions of ''control'' in the Change in Bank Control Act (CBCA)[58] and the FDIC's regulations implementing the CBCA except that they broaden the term to apply to control of a company and not solely insured depository institutions so that the definition can accurately describe the relationship between the parent company of an industrial bank and any of its nonbank subsidiaries, which also would be affiliates of the industrial bank.

The term ''Covered Company'' means any company that is not subject to Federal consolidated supervision by the FRB and that, directly or indirectly, controls an industrial bank (i) as a result of a change in bank control under section 7(j) of the FDI Act,[59] (ii) as a result of a merger transaction pursuant to section 18(c) of the FDI Act,[60] or (iii) that is granted deposit insurance under section 6 of the FDI Act,[61] in each case after the effective date of the rule.

Under these provisions, a company would control an industrial bank if the company would have the power, directly or indirectly, (i) to vote 25 percent or more of any class of voting shares of any industrial bank or any company that controls the industrial bank (*i.e.,* a parent company), or (ii) to direct the management or policies of any industrial bank or any parent company. In addition, the FDIC presumes that a company would have the power to direct the management or policies of any industrial bank or any parent company if the company will, directly or indirectly, own, control, or hold with power to vote at least 10 percent of any class of voting securities of any industrial bank or any parent company, and either the industrial bank's shares or the parent company's shares are registered under section 12 of the Securities Exchange Act of 1934, or no other person (including a company) will own, control, or hold with power to vote a greater percentage of any class of voting securities. If two or more companies, not acting in concert, will each have the same percentage, each such company will have control. As noted above, control of an industrial bank can be indirect. For example, company A may control company B which in turn may control company C which may control an industrial bank. Company A and company B would each have indirect control of the industrial bank, and company C would have direct control. As a result, the industrial bank would be a subsidiary of companies A, B, and C.

Question 5: Would there be any benefit in having or requiring a Covered Company that conducts activities other than financial activities to conduct some or all of its financial activities (including ownership and control of an industrial bank) through an intermediate holding company similar to what a grandfathered unitary savings and loan holding company may be required to do pursuant to section 626 of the Dodd-Frank Act? What other approaches may be appropriate?

The term ''FDI Act'' would be defined to mean the Federal Deposit Insurance Act, 12.U.S.C. 1811 *et seq.*

The term ''filing'' would mean an application, notice, or request submitted to the FDIC. This is the definition used in the FDIC's rules of procedure and practice[62] and allows the use of one term to describe the different documents submitted to the FDIC.

The term ''FRB'' would be defined to mean the Board of Governors of the Federal Reserve System and each Federal Reserve Bank.

The term ''industrial bank'' would be defined to mean any insured State bank that is an industrial bank, industrial loan company or other similar institution that is excluded from the BHCA definition of ''bank'' pursuant to section 2(c)(2)(H) of the BHCA.[63] The effect of section 2(c)(2)(H) is that the parent company of an industrial bank need not be a BHC.[64]

Question 6: Should the proposed rule also apply to other institutions that are excluded from the BHCA definition of ''bank'' pursuant to section 2(c)(2), such

[56] Although generally not subject to the proposed rule, grandfathered industrial banks and their parent companies that are not subject to Federal consolidated supervision by the FRB will remain subject to FDIC supervision, including but not limited to examinations and capital requirements. *See also* the discussion of the reservation of authority in section IV.F, of this **SUPPLEMENTARY INFORMATION**, *infra.*

[57] 12 U.S.C. 1813.

[58] 12 U.S.C. 1817(j)(8)(B).

[59] 12 U.S.C. 1817(j).

[60] 12 U.S.C. 1828(c).

[61] 12 U.S.C. 1816.

[62] *See* 12 CFR 303.2(s).

[63] *See* 12 U.S.C. 1841(c)(2)(H).

[64] Section 2(a)(1) of the BHCA provides that ''bank holding company'' means any company which has control over any bank or over any company that is or becomes a BHC by virtue of the BHCA. 12 U.S.C. 1841(a)(1).

as credit card banks and trust banks? For example, the CEBA amended the BHCA to exempt certain other institutions from the requirement that the parent company of a bank must be a BHC,[65] meaning that the parent companies of such institutions are not subject to Federal consolidated supervision. Explain what types of institutions should be addressed by the proposed rule and why.

The term ''senior executive officer'' would have the meaning given to it in the FDIC's regulations on changes in senior executive officer at 12 CFR 303.101(b). Thus, the term ''senior executive officer'' would mean a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured State branch of a foreign bank), chief financial officer, chief lending officer, or chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. ''Senior executive officer'' also would include any other person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the industrial bank.

Question 7: Are the definitions clear in their meaning and application? Should any other terms used in the proposed rule be defined?

C. Section 354.3—Written Agreement

This section would prohibit any industrial bank from becoming a subsidiary of a Covered Company unless the Covered Company enters into one or more written agreements with the FDIC and its subsidiary industrial bank. In such agreements, the Covered Company would make certain required commitments to the FDIC and the industrial bank, including those listed in paragraphs (a)(1) through (8) of § 354.4, the restrictions in § 354.5, and such other provisions as the FDIC may deem appropriate in the particular circumstances. When two or more Covered Companies will control (as the term ''control'' is defined in § 354.2), directly or indirectly, the industrial bank, each such Covered Company would be required to execute such written agreement(s). This circumstance could occur, for example, (i) when two or more Covered Companies will each have the power to vote 10 percent or more of the voting stock of an industrial bank or of a company that controls an industrial bank, the stock of which is registered under section 12 of the Securities Exchange Act of 1934, or (ii) when one Covered Company will control another Covered Company that directly controls an industrial bank.

In certain instances, the FDIC may, in its sole discretion, require, as a condition to the approval of or nonobjection to a filing, that a controlling shareholder of a Covered Company join as a party to any written agreement required in § 354.3. In such cases, the controlling shareholder would be required to cause the Covered Company to fulfill its obligations under the written agreement, through voting his or her shares, or otherwise.

In addition to the written agreements, commitments, and restrictions of the proposed rule, the FDIC may, and likely will, condition an approval of an application or a nonobjection to a notice on one or more actions or inactions of the applicant or notificant.[66] The FDIC may enforce conditions imposed in writing in connection with any action on any application, notice, or other request by an industrial bank or a company that controls an industrial bank,[67] so it is not necessary to include provisions regarding conditions in the proposed rule.

D. Section 354.4—Required Commitments and Provisions of Written Agreement

The FDIC historically has included conditions in deposit insurance approval orders for industrial banks that are intended to create a sufficient supervisory structure with respect to a Covered Company. The commitments that the FDIC has required industrial banks and their parent companies to undertake in written agreements have varied on a case-by-case basis, depending on the facts and circumstances and the particular concerns the FDIC has identified during the review of the application materials.

This section would require each party to a written agreement to comply with subsections (a)(1) through (8) of § 354.4. These required commitments are intended to provide the safeguards and protections that the FDIC believes are prudent to impose to maintain the safety and soundness of industrial banks that are controlled by Covered Companies. These required commitments and other provisions are intended to establish a level of information reporting and parent company obligations similar to that which would be in place if the Covered Company were subject to Federal consolidated supervision. The requirements reflect commitments and additional provisions that, for the most part, the FDIC has previously required as a condition of granting deposit insurance to industrial banks. The FDIC is proposing to include these required commitments in the rule to provide transparency to current and potential industrial banks, the companies that control them, and the general public.

In order to provide the FDIC with more timely and more complete information about the activities, financial performance and condition, operations, prospects, and risk profile of each Covered Company and its subsidiaries and affiliates, the proposed rule would require that each Covered Company must furnish to the FDIC an initial listing, with annual updates, of all of the Covered Company's subsidiaries (commitment (1)); consent to the FDIC's examination of the Covered Company and each of its subsidiaries to monitor compliance with any written agreements, commitments, conditions, and certain provisions of law (commitment (2)); submit to the FDIC an annual report on the Covered Company and its subsidiaries, and such other reports as the FDIC may request (commitment (3)); maintain such records as the FDIC deems necessary to assess the risks to the industrial bank and to the DIF (commitment (4)); and cause an independent audit of each subsidiary industrial bank to be performed annually (commitment (5)).

Question 8: For purposes of transparency and identifying any potential risks to the industrial bank, we have included commitments requiring examination and reporting. Is this approach the best way to gain that transparency, or is there a better way? To what extent, if any, is the FDIC's supervision enhanced by requiring a Covered Company to consent to examination of the Covered Company and each of its subsidiaries as proposed? Is there another way to identify any potential risks?

Question 9: The Gramm-Leach-Bliley Act of 1999 imposed certain restrictions on the extent to which a Federal banking agency may regulate and supervise a functionally regulated affiliate of an insured depository institution.[68] Conversely, the Federal banking agencies, including the FRB, impose various periodic reporting requirements on depository institutions and their parent companies. In view of

[65] Public Law 100–86, 101 Stat. 552 (Aug. 10, 1987). *See also* 12 CFR 225.145 (limitations established by the CEBA on the activities and growth of nonbank banks).

[66] *See* 12 CFR 303.11(a) (''The FDIC may approve, conditionally approve, deny, or not object to a filing after appropriate review and consideration of the record.''). *See* 12 CFR 303.2(dd) for a list of standard conditions.

[67] 12 U.S.C. 1818(b); 1831aa(a).

[68] *See* section 45 of the FDI Act, 12 U.S.C. 1831*v*.

these restrictions and requirements, are the commitments and requirements appropriately tailored to adequately carry out the purpose and intent of the proposed rule?

Question 10: The proposed rule would require a Covered Company to disclose to the FDIC the subsidiaries of the Covered Company. Should the proposed rule also require disclosure to the FDIC of certain additional affiliates or portfolio companies of the Covered Company, given that such entities could engage in transactions with, or otherwise impact, the subsidiary industrial bank?

In order to limit the extent of each Covered Company's influence over a subsidiary industrial bank, each Covered Company would commit to limit its representation on the industrial bank's board of directors to 25 percent of the members of the board, or if the bank is organized as a limited liability company and is managed by a board of managers, to 25 percent of the members of the board of managers, or if the bank is organized as a limited liability company and is managed by its members, to 25 percent of managing member interests (commitment (6)). For example, if company A, which has 15 percent representation on the subsidiary industrial bank's board, controls company B, then the companies' representation would be aggregated and limited to no more than 25 percent. Thus, company B's representation would be limited to no more than 10 percent.

Question 11: The proposed rule would limit board of directors (or similar body) representation to 25 percent of the members of the board of directors (or similar entity). The FDIC has chosen this threshold with the idea that 25 percent is a key threshold for control purposes. Is another threshold more appropriate? If so, what and why?

Additionally, in order to ensure that a subsidiary industrial bank has available to it the resources necessary to maintain sufficient capital and liquidity, each party to a written agreement would commit to maintain each subsidiary industrial bank's capital and liquidity at such levels as the FDIC deems necessary for the safe and sound operation of the industrial bank, and to take such other actions as the FDIC finds appropriate to provide each subsidiary industrial bank with the resources for additional capital or liquidity (commitment (7)).

Question 12: If there is an individual who is the dominant shareholder of a Covered Company, should that individual be required to commit to the maintenance of appropriate capital and liquidity levels?

Lastly, the proposed rule includes a requirement that each Covered Company and its subsidiary industrial bank(s) enter into a tax allocation agreement that expressly recognizes an agency relationship between the Covered Company and the subsidiary industrial bank with respect to tax assets generated by such industrial bank, and that all such tax assets are held in trust by the Covered Company for the benefit of the subsidiary industrial bank and promptly remitted to such industrial bank (commitment (8)). Companies and their subsidiaries, including insured depository institutions and their holding companies, will often file a consolidated income tax return. A 1998 interagency policy statement issued by the Federal banking agencies and the U.S. Department of the Treasury, and an addendum thereto [69] (collectively, Policy Statement), acknowledges such practices, noting that a consolidated group may prepare and file Federal and State income tax returns as a group so long as the interests of any insured depository institution subsidiaries are not prejudiced. Given the potential harm to insured subsidiary institutions, the Policy Statement encourages holding companies and their insured depository institution subsidiaries to enter into written, comprehensive tax allocation agreements, and notes that inconsistent practices regarding tax obligations may be viewed as an unsafe and unsound practice prompting either informal or formal corrective action. The proposed rule similarly seeks to avoid potential harm to the insured subsidiary institution by requiring such a written tax allocation agreement.

In addition to the eight commitments discussed above, pursuant to proposed § 354.4(b), the FDIC may condition the approval of an application or nonobjection to a notice on the Covered Company and industrial bank committing to adopt, maintain, and implement an FDIC-approved contingency plan that presents one or more actions to address potential significant financial or operational stress that could threaten the safe and sound operation of the insured industrial bank. The plan also would reflect strategies for the orderly disposition of the industrial bank without the need for the appointment of a receiver or conservator. Such disposition could include, for example, sale of the industrial bank to, or merger with, a third party. The proposed rule describes this contingency plan commitment in general terms, thereby preserving the FDIC's supervisory discretion to tailor the contents of any contingency plan to a given Covered Company and its insured industrial bank subsidiary. The FDIC's ability to tailor the contents of a contingency plan for a given Covered Company and its industrial bank minimizes the burden of developing and implementing the plan. In the case where a contingency plan commitment is included as a condition to approval of an application or nonobjection to a notice, the FDIC may take into account the size, complexity, interdependencies, and other factors relevant to the industrial bank and Covered Company. The FDIC is of the view that requiring a contingency plan would lead the FDIC, as well as the Covered Company and its subsidiary industrial bank, to a better understanding of the interdependencies, operational risks, and other circumstances or events that could create safety and soundness concerns for the insured industrial bank and attendant risk to the DIF. The contingency plan would not be a resolution plan, but rather, an explanation of the steps the industrial bank and Covered Company could take to mitigate the impacts of financial and operational stress outside of the receivership process.

While the contingency plan is one type of commitment that the FDIC would be able to require of Covered Companies and their industrial bank subsidiaries, there may be other commitments that the FDIC may determine to be appropriate given the business plan, capital levels, or organizational structure of a Covered Company or its subsidiary industrial bank. Section 354.4(c) would provide, then, that the FDIC may require such additional commitments in addition to those described in § 354.4(a) or (b) in order to ensure the safety and soundness of the industrial bank and reduce potential risk to the DIF.

Question 13: Some of the provisions include continuing commitments, such as to maintain capital. Should the proposed rule include a cure period in the event that the industrial bank or its parent company initially comply with these commitments, but later fall out of compliance? If so, should such a cure period be provided for all commitments or certain commitments (please specify)? Alternatively, should the FDIC rely on its enforcement authorities under sections 8 and 50 of the FDI Act to take action as appropriate?

[69] *See* Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure, 63 FR 64757 (Nov. 23, 1998); Addendum to the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure, 79 FR 35228 (June 19, 2014).

Question 14: In order to ensure that each Covered Company can serve as a source of financial strength to its industrial bank subsidiary and fulfill its obligations under a capital maintenance agreement, should the FDIC include a commitment that the parent company will maintain its own capital at some defined level on a consolidated basis in all circumstances? How should the FDIC determine the level?

E. Section 354.5—Restrictions on Industrial Bank Subsidiaries of Covered Companies

Section 354.5 would require the FDIC's prior written approval before an industrial bank that is a subsidiary of a Covered Company may take certain actions. These restrictions, like the required commitments discussed above, are generally intended to provide the safeguards and protections that the FDIC believes would be prudent to impose with respect to maintaining the safety and soundness of industrial banks that become controlled by companies that are not subject to Federal consolidated supervision. Accordingly, the proposed rule would require prior FDIC approval if the subsidiary industrial bank wanted to take any of five actions set forth in § 354.5(a).

In order to ensure that the industrial bank does not immediately after becoming a subsidiary of a Covered Company engage in high-risk or other inappropriate activities, the subsidiary industrial bank would be required to obtain the FDIC's prior approval to make a material change in its business plan after becoming a subsidiary of a Covered Company (paragraph (1)). In order to limit the influence of the parent Covered Company, the subsidiary industrial bank would have to obtain the FDIC's prior approval to add or replace a member of the board of directors or board of managers or a managing member, as the case may be (paragraph (2)); add or replace a senior executive officer (paragraph (3)); employ a senior executive officer who is associated in any manner with an affiliate of the industrial bank, such as a director, officer, employee, agent, owner, partner, or consultant of the Covered Company or a subsidiary thereof (paragraph (4)); or enter into any contract for material services with the Covered Company or a subsidiary thereof (paragraph (5)). Pursuant to proposed § 354.5(b), the FDIC could, on a case-by-case basis, impose additional restrictions on the Covered Company or its controlling shareholder if circumstances warrant.

Question 15: Should the FDIC further define ''services material to the operations of the industrial bank'' as that phrase is used in the proposed § 354.5(e)? If so, how should the term be defined?

Question 16: Should any of the restrictions in § 354.5 be temporally limited, for example, to the first three years after becoming a subsidiary of such Covered Company?

F. Section 354.6—Reservation of Authority

The FDIC proposes to clarify that it retains the authority to take supervisory or enforcement actions, including actions to address unsafe or unsound practices, or violations of law.

Thus, the FDIC could require grandfathered industrial banks and their parent companies that are not subject to Federal consolidated supervision by the FRB to enter into written agreements, provide commitments, or abide by restrictions if necessary to maintain the safety and soundness of the industrial bank. Similarly, the FDIC retains the authority to require additional commitments from a Covered Company and its subsidiary industrial bank to enter into written agreements, provide commitments, or abide by restrictions if necessary to maintain the safety and soundness of the industrial bank, even if not in the context of a filing.

Question 17: Should the FDIC retain the authority to require additional written agreements, commitments, or conditions on or by an industrial bank or Covered Company after the nonobjection to a change in bank control, approval of a merger transaction, or a grant of deposit insurance by the FDIC? Should the FDIC retain the power to require additional written agreements, commitments, or conditions on or by an industrial bank or parent company of an industrial bank that became a subsidiary of a parent company that is not subject to Federal consolidated supervision by the FRB prior to the effective date?

V. Expected Effects

As previously discussed, the proposed rule would require or impose certain commitments, restrictions, and conditions for each deposit insurance application approval, nonobjection to a change in control notice, and merger application approval that would result in an industrial bank becoming, pursuant to the proposed rule, a subsidiary of a Covered Company. The proposal would require such Covered Company to enter into one or more written agreements with the FDIC and the industrial bank subsidiary.

A. Overview of Industrial Banks

As of December 31, 2019, the FDIC supervised 3,344 insured depository institutions, with combined assets of $3.4 trillion. Of these, 23 institutions were industrial banks, comprising 0.7 percent of all FDIC-supervised institutions. The industrial banks hold combined assets of $150.3 billion, comprising 4.4 percent of the combined assets of FDIC-supervised institutions.[70] The majority of industrial banks are headquartered in Utah and Nevada, and hold nearly all of the combined assets of industrial banks. As of December 31, 2019, 14 industrial banks were headquartered in Utah, four in Nevada, three in California, one in Hawaii, and one in Minnesota.

The proposed rule would apply prospectively to deposit insurance, change in control, and merger transactions involving an industrial bank as the resultant institution that is controlled by a Covered Company. It is difficult to estimate the number of potential Covered Companies that will seek to establish or acquire an industrial bank, as such an estimate depends on considerations that affect Covered Companies' decisions. These considerations, and how they affect decision making, are difficult for the FDIC to forecast, estimate, or model, as the considerations include external parties' evaluations of potential business strategies for the industrial bank as well as future financial conditions, rates of return on capital, and innovations in the provision of financial services, among others. However, during the period of 2017 through 2019, the FDIC received nine industrial bank deposit insurance applications and one change in control application.[71] Consistent with the Paperwork Reduction Act (PRA) estimates presented elsewhere in this notice of proposed rulemaking, for this analysis the FDIC is estimating that the proposed rule, if implemented, would apply to four filings per year seeking to establish or acquire an industrial bank.

The proposed rule could indirectly affect subsidiaries of Covered Companies. Such Covered Companies operate through a variety of structures that include a range of subsidiaries and affiliates. Further, the proposal includes the FDIC's reservation of authority to require any industrial bank and its parent company, if not otherwise subject to part 354, to enter into written agreements, provide commitments, or

[70] December 31, 2019, Call Report data.

[71] During the same period, the FDIC did not receive any merger applications involving industrial banks.

abide by restrictions, as appropriate. Therefore, it is difficult to estimate the number of subsidiaries and affiliates of prospective Covered Companies, based on information currently available to the FDIC. However, based on the FDIC's experience as the primary Federal regulator of industrial banks,[72] the FDIC believes that the number of subsidiaries of the prospective Covered Companies affected by the proposed rule is likely to be small.

B. Analysis of the Commitments

Under the proposal, prospective Covered Companies would be required to agree to the eight commitments, and may be required to agree to additional commitments under certain circumstances, which in summary include commitments by the Covered Company to:

- Furnish an initial listing, with annual updates, of the Covered Company's subsidiaries.
- Consent to the examination of the Covered Company and its subsidiaries.
- Submit an annual report on the Covered Company and its subsidiaries, and such other reports as requested.
- Maintain such records as deemed necessary.
- Cause an independent annual audit of each industrial bank.
- Limit the Covered Company's representation on the industrial bank's board of directors or managers (board), as the case may be, to 25 percent.
- Maintain the industrial bank's capital and liquidity at such levels as deemed appropriate and take such other action to provide the industrial bank with a resource for additional capital or liquidity.
- Enter into a tax allocation agreement.
- Depending on the facts and circumstances, provide, adopt, and implement a contingency plan that sets forth strategies for recovery actions and the orderly disposition of the industrial bank without the need for a receiver or conservator.

The FDIC historically has imposed prudential conditions similar to the commitments listed above in connection with approving or not objecting to certain industrial bank filings. These conditions generally relate to the board and senior management, the business plan, operating policies, financial records, affiliate relationships, and other conditions on a case-by-case basis, depending on the facts and circumstances identified during the review of the respective filings.[73]

The table below presents the FDIC's analysis of the estimated costs to institutions that would be affected by the proposed rule of each required commitment included in the proposal. In each case, the FDIC used a total hourly compensation estimate of $94.15 per hour.[74]

Proposed commitment	Estimated annual compliance hours	Estimated annual compliance costs
Lists of Subsidiaries	4	$376.60
Consent to the FDIC Examination	100	9,415.00
Annual and Such Other Reports as the FDIC may Request	10	941.50
Maintain Such Records as the FDIC Deems Necessary	10	941.50
Independent Audit Note 1	100	9,415.00
Limit Membership on Board Note 2	0	0.00
Maintain Capital and Liquidity	12	1,129.80
Tax Allocation Agreement Note 3	0	0.00
Total	236	22,219.40

Note 1 The disclosure requirement and time to fulfill it are due to satisfying regulatory inquiries about the audit, and do not include the cost of the audit itself because Covered Companies already conduct audits for other purposes.
Note 2 Determinations regarding board membership are considered in the normal course of business.
Note 3 Tax allocation agreements are normal and customary among affiliated corporate entities.

The proposed rule also authorizes the FDIC to require additional commitments, including a contingency plan that sets forth strategies for recovery actions and the orderly disposition of the industrial bank without the appointment of a receiver or conservator. The additional contingency plan commitment would be required only in certain circumstances, based on the facts and circumstances presented and taking into consideration the size, complexity, interdependencies, and other factors relevant to the industrial bank and Covered Company. Because this commitment is an enhancement to the FDIC's historical approach, and because the commitment is not expected to be required in all cases, the FDIC analyzed the estimated burden in greater detail.

It is difficult to estimate the recordkeeping, reporting, and disclosure costs associated with the contingency plan aspect of the proposed rule because it depends on the organizational structure and activities of potential future Covered Companies. The FDIC currently lacks such detailed

[72] Historically, industrial banks have elected not to become members of the Federal Reserve System. The FDIC is the primary Federal regulator for State nonmember banks and the insurer for all insured depository institutions.

[73] *See* FDIC Deposit Insurance Application Procedures Manual Supplement, Applications from Non-Bank and Non-Community Bank Applicants, FIL–8–2020 (Feb. 10, 2020).

[74] Subject matter experts in the FDIC's Division of Risk Management Supervision estimated that time devoted to complying with the commitments is broken down as follows: 25 percent (Executives and Managers), 15 percent (Legal), 15 percent (Compliance Officers), 15 percent (Financial Analysts), 15 percent (IT Specialists), and 15 percent (Clerical). The Standard Occupational Classification System occupations and codes used by the FDIC are: Executives and Managers (Management Occupations, 110000), Lawyers (Lawyers, Judges, and Related Workers, 231000), Compliance Officers (Compliance Officers, 131041), Financial Analysts (Financial Analysts, 132051), IT Specialists (Computer and Mathematical Occupations, 150000), and Clerical (Office and Administrative Support Occupations, 430000). To estimate the weighted average hourly compensation cost of these employees, the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates as used for the relevant occupations in the Depository Credit Intermediation sector, as of May 2018. The 75th-percentile wage for lawyers is not reported, as it exceeds $100 per hour, so $100 per hour is used. The hourly wage rates reported do not include non-monetary compensation. According to the September 2019 Employer Cost of Employee Compensation data, compensation rates for health and other benefits are 33.8 percent of total compensation. To account for non-monetary compensation, the hourly wage rates reported by BLS are adjusted by that percentage. The hourly wage is adjusted by 2.28 percent based on changes in the Consumer Price Index for Urban Consumers from May 2018 to September 2019 to account for inflation and ensure that the wage information is contemporaneous with the non-monetary compensation statistic. Finally, the benefit-and-inflation-adjusted wages for each occupation are weighted by the percentages listed above to arrive at a weighted hourly compensation rate of $94.15.

information on potential future Covered Companies. While the contingency plan commitment is meaningfully different from resolution plan requirements for large banks, and while industrial banks that might need to develop such contingency plans are meaningfully different from large banks subject to resolution planning requirements, the FDIC considered prior analyses regarding resolution planning requirements imposed on certain institutions to instruct its analysis.

Based in part on the FDIC's experience implementing and managing the resolution planning requirements of 12 CFR 360.10, the FDIC estimates that Covered Companies and their industrial banks subject to the contingency plan commitment could incur $326,000 in recordkeeping, reporting, and disclosure compliance costs annually. To put the estimated cost of this commitment into context, the pre-tax net income of the median industrial bank in 2019 was $64,515,000.[75] But, because the FDIC would have the supervisory discretion to tailor the contents of any contingency plan to a given Covered Company and its industrial bank, and because of the unique circumstances of the respective Covered Companies and industrial banks, the compliance costs incurred by Covered Companies would vary on a case-by-case basis, and could be lower.

As illustrated by the preceding analysis, the proposed rule could pose as much as $348,000 in additional recordkeeping, reporting, and disclosure compliance costs for each Covered Company that seeks to establish or acquire an industrial bank.[76] Covered Companies would also be likely to incur some regulatory costs associated with making the necessary changes to internal systems and processes. For context, the estimated $348,000 recordkeeping, reporting, and disclosure costs only comprise 0.8 percent of the median non-interest expense for the 23 existing industrial banks.[77]

The FDIC believes that the proposed rule would benefit the public by providing transparency for market participants and other interested parties. Additionally, the FDIC believes that the proposed rule would benefit the public by formalizing a framework by which the FDIC would supervise industrial banks and mitigate risk to the DIF that may otherwise be presented.

[75] December 31, 2019, Call Report data.

[76] $22,219.40 for all Covered Companies that seek to establish or acquire an industrial bank, and an additional $326,000 for those institutions required to adopt, implement, and adhere to a contingency plan.

[77] December 31, 2019, Call Report data.

It is difficult to estimate whether the proposed rule would serve as an incentive or disincentive for affected parties. Decisions to establish or acquire an industrial bank depend on many considerations that the FDIC cannot accurately forecast, estimate, or model, such as future financial conditions, rates of return on capital, and innovations in the provision of financial services. The proposed rule would enhance transparency in the FDIC's evaluation of filings, which could increase the number of applications received. However, such transparency could also serve to limit the number of applications received.

The FDIC analyzed historical trends in filings that would be subject to the proposal. Based on that analysis, and consistent with the FDIC's PRA analysis, the FDIC assumes four applications: Three deposit insurance applications, and one change in bank control notice per year, on average. Between 2000 and 2009, the FDIC received as many as 12 and as few as two deposit insurance applications from entities seeking to organize an industrial bank; between 2017 and 2019, the FDIC received as many as four and as few as two such applications. Therefore, the FDIC believes it is reasonable to assume an annual deposit insurance application volume of three for the purpose of this analysis. In addition, the FDIC has received three change in bank control notices relating to industrial banks since 2010; therefore, the FDIC believes it is reasonable to assume an annual volume of one for the purpose of this analysis.

C. Safety and Soundness of Affected Banks

The FDIC believes the proposed rule is consistent with supervisory approaches the FDIC has used to insulate industrial banks from risks posed by their parent companies, and that these supervisory approaches have been effective. For example, as previously noted, only two small industrial banks failed during the crisis. The FDIC believes the proposed rule would provide a prudentially sound framework for reaching decisions on industrial bank filings that the FDIC receives from time to time.

D. Broad Effects on the Banking Industry

To the extent that the proposed rule results in higher numbers of industrial banks, the increase could lead to increased competition for depositors and borrowers. The increased competition could result in one or more of: Higher yields on deposit products, lower interest rates on loan products, reduced fees, less restrictive underwriting standards, greater account opening bonuses for new customers, and other benefits. To the extent that the proposed rule does not result in a higher number of industrial banks, this would not be expected to lead to increased competition for depositors and borrowers.

E. Expected Effects on Consumers

To the degree the proposal, once adopted, results in an increase in the number of industrial banks, consumers could benefit from increased competition within the banking industry. These benefits could take the form of higher rates on deposit accounts, improved access to credit with better terms or lower rates, and lower fees for banking services. To the extent that the proposed rule does not result in a higher number of industrial banks, this would not be expected to lead to potential benefits from increased competition within the banking industry.

F. Expected Effects on the Economy

The proposal's effects on the economy are likely to be modest, in line with its potential effects on the banking industry and consumers. If the proposal results in a modest increase in the number of industrial banks or improvement in the provision of banking products and services, the effects on the economy are likely to be modest.

VI. Request for Comment

The FDIC is inviting comment on all aspects of the proposed rule. In addition to the questions above, the FDIC seeks responses to the following additional questions:

Question 18: In evaluating the statutory factors under section 6 of the FDI Act for deposit insurance applications, should the FDIC consider an evaluation of the competitive effects of the parent company's or the parent company's affiliates' provision of consumer products aggregated with the activities of the industrial bank?

Question 19: The current Interagency Charter and Federal Deposit Insurance Application[78] *requests information related to two broad categories, Market Characteristics and Community Reinvestment Act Plan, to assist the FDIC in determining whether the convenience and needs of the community to be served by an industrial bank will be met with the overall purpose of maintaining a sound and effective banking system. Are there any*

[78] *See https://www.fdic.gov/formsdocuments/interagencycharter-insuranceapplication.pdf.*

other categories of information that the FDIC should consider in evaluating an industrial bank's ability to meet the convenience and needs of the community to be served by such industrial bank where the industrial bank will have a limited physical presence or will rely heavily on technology to deliver products and services?

Question 20: The FDIC has typically required, as conditions for approval, a number of additional commitments when considering applications involving foreign ownership of a proposed insured depository institution. These conditions address matters regarding service of process and access to information on the operations and activities of the parent company and its subsidiaries. Are there additional safeguards, commitments, or restrictions the FDIC should consider for a foreign Covered Company? Should additional capital or liquidity levels be considered?

VII. Regulatory Analysis

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[79] However, an initial regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[80] The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[81]

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 has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Based on its analysis and for the reasons stated below, the FDIC believes that this proposed rule will not have a significant economic impact on a substantial number of small entities.

As of September 30, 2019, the FDIC supervises 3,390 institutions, of which 2,662 are defined as small institutions by the terms of the RFA.[82] Of these 3,390 institutions, 23 are industrial banks.

As previously discussed, a currently chartered industrial bank would be subject to the proposed rule, as would its parent company that is not subject to Federal consolidated supervision, if such a parent company acquired control of the grandfathered industrial bank pursuant to a change in bank control transaction that closes after the effective date of the proposed rule, or if the grandfathered industrial bank is the surviving institution in a merger transaction that closes after the effective date of the proposed rule.

Of the 23 existing industrial banks, eight reported total assets less than $600 million, indicating that they could be small entities. However, to determine whether an institution is ''small'' for the purposes of the RFA, the SBA requires consideration of the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.[83] The FDIC conducted an analysis to determine whether each industrial bank's parent company was ''small'', according to the SBA size standards applicable to each particular parent company.[84] Of the eight industrial banks that reported total assets less than $600 million, the FDIC was able to determine that three of these potentially small industrial banks were owned by holding companies which were not small for purposes of the RFA. However, the FDIC currently lacks information necessary to determine whether the remaining five industrial banks are small. Therefore, of the 23 existing industrial banks, 18 are not small entities for purposes of the RFA, but no more than five, or about 22 percent, may be small entities.

Additionally, the FDIC has received three change in control notices relating to industrial banks since 2010. Of those three, only one was from an industrial bank that could possibly be small for purposes of the RFA.

Therefore, given that no more than five of the 23 existing industrial banks are small entities for the purposes of the RFA, and that no more than one change in control notice received by the FDIC since 2010 may be from a small entity, the FDIC believes the aspects of the proposal relating to change in control notices or merger applications involving industrial banks is not likely to affect a substantial number of small entities among existing industrial banks.

As previously discussed, the proposed rule would apply to industrial banks that, as of the effective date, become subsidiaries of companies that are Covered Companies, as such term is defined in § 354.2. It is difficult for the FDIC to estimate the volume of future applications from entities who seek to own and operate an insured industrial bank, or whether those entities would be considered ''small'' according to the terms of RFA, with the information currently available to the FDIC. Such estimates would require detailed information on the particular business models of institutions, prevailing economic and financial conditions, the decisions of senior management, and the demand for financial services, among other things. However, the FDIC reviewed the firms with industrial bank applications pending before the FDIC as of December 31, 2019. Each publically traded applicant had a market capitalization of at least $1 billion as of March 6, 2020. Each applicant operates either nationally within the United States, or operates worldwide, and none appear likely to be small for purposes of the RFA. Therefore, the FDIC believes that the aspects of the proposal relating to entities who seek to own and operate an insured industrial bank is not likely to affect a substantial number of small entities among existing industrial banks.

Therefore, based on the preceding information, the FDIC certifies that the proposed rule does not significantly affect a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

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[79] 5 U.S.C. 601 *et seq.*

[80] 5 U.S.C. 605(b).

[81] 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, effective Aug. 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, regardless of whether the affiliates are organized for profit.'' 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.

[82] September 30, 2019, Call Report data. In order to determine whether an entity is ''small'' for purposes of the Regulatory Flexibility Act, the FDIC uses its ''affiliated and acquired assets'' as described in the immediately preceding footnote. The latest available bank and thrift holding company reports, which the FDIC uses to determine an entity's ''affiliated and acquired assets,'' are as of September 30, 2019.

[83] 12 CFR 121.103.

[84] For example, if a particular industrial bank's parent company was a motorcycle manufacturer, then the size standards applicable to motorcycle manufacturers were used.

B. Paperwork Reduction Act

In accordance with the requirements of the PRA,[85] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

As discussed above, the proposed rule imposes PRA reporting and recordkeeping requirements for each industrial bank subject to the rule and its Covered Company. In particular, each industrial bank, and each Covered Company that directly or indirectly controls the industrial bank, must (i) agree to furnish the FDIC an initial listing, with annual updates, of all of the Covered Company's subsidiaries; (ii) submit to the FDIC an annual report on the Covered Company and its subsidiaries, and such other reports as the FDIC may request; (iii) maintain such records as the FDIC deems necessary to assess the risks to the industrial bank and to the DIF; and (iv) in the event that the FDIC has concerns about a complex organizational structure or based on other circumstances presented by a particular filing, the FDIC may condition the approval of an application or the nonobjection to a notice—in each case that would result in an industrial bank being controlled, directly or indirectly, by a Covered Company—on the Covered Company and industrial bank committing to providing to the FDIC, and thereafter adopting and implementing, a contingency plan that sets forth, at a minimum, one or more strategies for recovery actions and the orderly disposition of such industrial bank, without the need for the appointment of a receiver or conservator.

The FDIC will request approval from the OMB for this proposed information collection and the PRA reporting and recordkeeping requirements. OMB will assign an OMB control number. The information collection requirements contained in this proposed rulemaking will be submitted by the FDIC to OMB for review and approval under section 3507(d) of the PRA[86] and section 1320.11 of the OMB's implementing regulations.[87] Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(b) The accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on the collection of information should be sent to the address listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; or by facsimile to 202–395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title: Industrial Banks and Industrial Loan Companies.

OMB Number: 3064–NEW.

Affected Public: Prospective parent companies of industrial banks and industrial loan companies.

SUMMARY OF ANNUAL BURDEN AND INTERNAL COST

	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response	Frequency of response	Total annual estimated burden (hours)
Initial listing of all of the Covered Company's subsidiaries.	Reporting	Mandatory	4	1.00	4	One Time	16
Annual update of listing of all of the Covered Company's subsidiaries.	Reporting	Mandatory	4	1.00	4	Annual	16
Annual report on the Covered Company and its subsidiaries, and such other reports as the FDIC may request.	Reporting	Mandatory	4	1.00	10	Annual	40
Maintain records to assess the risks to the industrial bank and to the DIF.	Recordkeeping	Mandatory	4	1.00	10	Annual	40
Contingency Plan	Reporting	Mandatory	1	1.00	345	On Occasion	345
Total Hourly Burden							457

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[88] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a Federal banking agency subject to the provisions of this section, the FDIC has sought to present the proposed rule in a simple and straightforward manner.

The FDIC invites comments on whether the proposal is clearly stated and effectively organized, and how the FDIC might make the proposal easier to understand. For example:

• Has the FDIC organized the material to suit your needs? If not, how could it present the rule more clearly?

• Has the FDIC clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?

• Does the rule contain technical jargon that is not clear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?

• What else could the FDIC do to make the regulation easier to understand?

[85] 44 U.S.C. 3501 *et seq.*

[86] 44 U.S.C. 3507(d).

[87] 5 CFR 1320.11.

[88] 12 U.S.C. 4809.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[89] 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 principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on 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.[90] The FDIC invites comments that further will inform its consideration of RCDRIA.

PART 354—INDUSTRIAL BANKS

Sec.
354.1 Scope.
354.2 Definitions.
354.3 Written agreement.
354.4 Required commitments and provisions of written agreement.
354.5 Restrictions on industrial bank subsidiaries of Covered Companies.
354.6 Reservation of authority.

Authority: 12 U.S.C. 1811, 1815, 1816, 1817, 1818, 1819(a) (Seventh) and (Tenth), 1820(g), 1831*o*–1, 3108, 3207.

§ 354.1 Scope.

(a) In addition to the applicable filing procedures of part 303 of this chapter, this part establishes certain requirements for filings involving an industrial bank or a Covered Company.

(b) The requirements of this part do not apply to an industrial bank that is organized as a subsidiary of a company that is not subject to Federal consolidated supervision by the FRB on or before [EFFECTIVE DATE OF THE RULE]. In addition, this part does not apply to:

(1) Any industrial bank that is or becomes controlled by a company that is subject to Federal consolidated supervision by the FRB; and

(2) Any industrial bank that is not or will not become a subsidiary of a company.

§ 354.2 Definitions.

Unless defined in this part, terms shall have the meaning given to them in section 3 of the FDI Act.

''Control'' means the power, directly or indirectly, to direct the management or policies of a company or to vote 25 percent or more of any class of voting securities of a company, and includes the rebuttable presumptions of control at 12 CFR 303.82(b)(1) and of acting in concert at 12 CFR 303.82(b)(2). For purposes of this part, the presumptions set forth in 12 CFR 303.83(b)(1) and (2) shall apply with respect to any company in the same manner and to the same extent as if they applied to an acquisition of securities of the company.

''Covered Company'' means any company that is not subject to Federal consolidated supervision by the FRB and that controls an industrial bank (i) as a result of a change in bank control pursuant to section 7(j) of the FDI Act; (ii) as a result of a merger transaction pursuant to section 18(c) of the FDI Act; or (iii) that is granted deposit insurance by the FDIC pursuant to section 6 of the FDI Act, in each case after [EFFECTIVE DATE OF THE RULE].

''FDI Act'' means the Federal Deposit Insurance Act, 12 U.S.C. 1811, *et seq.*

''Filing'' has the meaning given to it in 12 CFR 303.2(s).

''FRB'' means the Board of Governors of the Federal Reserve System and each Federal Reserve Bank.

''Industrial bank'' means any insured State bank that is an industrial bank, industrial loan company, or other similar institution that is excluded from the definition of the term ''bank'' in section 2(c)(2)(H) of the Bank Holding Company Act, 12 U.S.C. 1841(c)(2)(H).

''Senior executive officer'' has the meaning given it in 12 CFR 303.101(b).

§ 354.3 Written agreement.

(a) No industrial bank may become a subsidiary of a Covered Company unless the Covered Company enters into one or more written agreements with both the FDIC and the subsidiary industrial bank, which contain commitments by the Covered Company to comply with each of paragraphs (a)(1) through (8) in § 354.4 of this part and such other written agreements, commitments, or restrictions as the FDIC deems appropriate, including, but not limited to, the provisions of §§ 354.4 and 354.5.

(b) The FDIC may, at its sole discretion, condition a grant of deposit insurance, issuance of a nonobjection to a change in control, or approval of a merger on an individual who is a controlling shareholder of a Covered Company joining as a party to any written agreement required by paragraph (a) of this section.

§ 354.4 Required commitments and provisions of written agreement.

(a) The commitments required to be made in the written agreements referenced in § 354.3 are set forth in paragraphs (1) through (8) of this section. In addition, with respect to an industrial bank subject to this part, the FDIC will condition each grant of deposit insurance, each issuance of a nonobjection to a change in control, and each approval of a merger on compliance with paragraphs (1) through (8) of this section by the parties to the written agreement. As required, each Covered Company must:

(1) Submit to the FDIC an initial listing of all of the Covered Company's subsidiaries and update such list annually;

(2) Consent to the examination by the FDIC of the Covered Company and each of its subsidiaries to permit the FDIC to assess compliance with the provisions of any written agreement, commitment, or condition imposed; the FDI Act; or any other Federal law for which the FDIC has specific enforcement jurisdiction against such Covered Company or subsidiary; and all relevant laws and regulations;

(3) Submit to the FDIC an annual report describing the Covered Company's operations and activities, in the form and manner prescribed by the FDIC, and such other reports as may be requested by the FDIC to inform the FDIC as to the Covered Company's:

(i) Financial condition;

(ii) systems for identifying, measuring, monitoring, and controlling financial and operational risks;

(iii) transactions with depository institution subsidiaries of the Covered Company; and

(iv) compliance with applicable provisions of the FDI Act and any other law or regulation.

(4) Maintain such records as the FDIC may deem necessary to assess the risks to the subsidiary industrial bank or to the Deposit Insurance Fund;

(5) Cause an independent audit of each subsidiary industrial bank to be performed annually;

(6) Limit the Covered Company's direct or indirect representation on the board of directors or board of managers, as the case may be, of each subsidiary industrial bank to no more than 25% of the members of such board of directors or board of managers, in the aggregate, and, in the case of a subsidiary

[89] 12 U.S.C. 4802(a).

[90] 12 U.S.C. 4802(b).

industrial bank that is organized as a member-managed limited liability company, limit the Covered Company's representation as a managing member to no more than 25% of the managing member interests of the subsidiary industrial bank, in the aggregate;

(7) Maintain the capital and liquidity of the subsidiary industrial bank at such levels as the FDIC deems appropriate, and take such other actions as the FDIC deems appropriate to provide the subsidiary industrial bank with a resource for additional capital and liquidity including, for example, pledging assets, obtaining and maintaining a letter of credit from a third-party institution acceptable to the FDIC, and providing indemnification of the subsidiary industrial bank; and

(8) Execute a tax allocation agreement with its subsidiary industrial bank that expressly states that an agency relationship exists between the Covered Company and the subsidiary industrial bank with respect to tax assets generated by such industrial bank, and that further states that all such tax assets are held in trust by the Covered Company for the benefit of the subsidiary industrial bank and will be promptly remitted to such industrial bank. The tax allocation agreement also must provide that the amount and timing of any payments or refunds to the subsidiary industrial bank by the Covered Company should be no less favorable than if the subsidiary industrial bank were a separate taxpayer.

(b) The FDIC may require such Covered Company and industrial bank to commit to provide to the FDIC, and, thereafter, implement and adhere to, a contingency plan subject to the FDIC's approval that sets forth, at a minimum, recovery actions to address significant financial or operational stress that could threaten the safe and sound operation of the industrial bank and one or more strategies for the orderly disposition of such industrial bank without the need for the appointment of a receiver or conservator.

(c) The FDIC may, at its sole discretion, require additional commitments by a Covered Company or by an individual who is a controlling shareholder of a Covered Company. Such commitments may be in addition to those set forth in paragraphs (a) and (b) of this section.

§ 354.5 Restrictions on industrial bank subsidiaries of Covered Companies.

(a) Without the FDIC's prior written approval, an industrial bank that is controlled by a Covered Company shall not:

(1) Make a material change in its business plan after becoming a subsidiary of such Covered Company;

(2) Add or replace a member of the board of directors, board of managers, or a managing member, as the case may be, of the subsidiary industrial bank after becoming a subsidiary of such Covered Company;

(3) Add or replace a senior executive officer after becoming a subsidiary of such Covered Company;

(4) Employ a senior executive officer who is associated in any manner (*e.g.,* as a director, officer, employee, agent, owner, partner, or consultant) with an affiliate of the industrial bank; or

(5) Enter into any contract for services material to the operations of the industrial bank (for example, loan servicing function) with such Covered Company or any subsidiary thereof.

(b) The FDIC may, at its sole discretion, impose restrictions on the activities or operations of an industrial bank that is controlled by a Covered Company. Such restrictions may be in addition to those required pursuant to paragraph (a) of this section.

§ 354.6 Reservation of authority.

Nothing in this part limits the authority of the FDIC under any other provision of law or regulation to take supervisory or enforcement actions, including actions to address unsafe or unsound practices or conditions, or violations of law.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on March 17, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–06153 Filed 3–30–20; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–1102; Notice No. 25–20–03–SC]

Special Conditions: Qantas Airways Limited, Boeing Model 737–800 Airplane; Personal Electronic-Device Straps Installed on Seat Backs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Boeing Model 737–800 airplane. This airplane, as modified by Qantas Airways Limited (Qantas), 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 personal electronic-device (PED) retention straps installed on the backs of passenger seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed 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: Send comments on or before May 15, 2020.

ADDRESSES: Send comments identified by Docket No. FAA–2019–1102 using any of the following methods:

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

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

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

FOR FURTHER INFORMATION CONTACT: John Shelden, 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 206–231–3214; email *john.shelden@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Background

On June 12, 2019, Qantas applied for a supplemental type certificate to install PED retention straps on passenger seat backs in Boeing Model 737–800 airplanes. The Boeing Model 737–800 airplane is a twin-engine transport airplane with seating for 189 passengers, and a maximum takeoff weight of 174,200 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Qantas must show that the Boeing Model 737–800 series airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE, or the applicable regulations in effect on the date of application for the change.

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 737–800 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737–800 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 737–800 airplane, as modified by Qantas, will incorporate the following novel or unusual design feature:

Personal electronic-device (PED) retention straps installed on the backs of passenger seats.

Discussion

In recent years, PEDs have been known to cause smoke and fires inside the fuselage due to the PED falling into areas of the cabin where it cannot be retrieved. The installation of a PED retention strap is intended to reduce the possibly of smoke or fire in flight due to PED loss throughout the cabin.

The addition of a PED strap on the backs of passenger seats will be a functional design feature to enable passengers to view their own device without losing them throughout the cabin. The PED strap's practical use is envisaged particularly during the meal service where meal tray space is limited.

Tablet devices and related PED designs are continually evolving, so it is challenging to find a suitable method of retention. These special conditions address the design and integration of a PED strap installed onto the back of the headrest cover of the B/E Aerospace Millennium (J class) and B/E Aerospace Innovator II (Y class) seats. The PED strap will allow passengers to view a tablet device without having to hold the device during the inflight phase. The PED strap must not be used during taxi, takeoff, and landing. The PED strap is also subject to certain load limits to ensure the strap can accommodate different PED sizes.

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

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737–800 airplane, as modified by Qantas. Should Qantas apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

■ Accordingly, the FAA proposes the following special conditions as part of the type certification basis for Boeing Model 737–800 airplanes, as modified by Qantas.

1. The PED strap must meet the requirements of § 3.1 (Abuse Loads) of SAE International Aerospace Recommended Practice ''Aircraft Seat Design Guidance and Clarifications'' document no. ARP5526C.

2. The limitations section of the airplane flight manual must prohibit use of PED straps during taxi, takeoff, and landing phases of flight. Operational procedures may be used to achieve this.

3. A means must be provided to limit the use of the PED strap to passenger tablets and related PEDs. Placards may be used to achieve this.

4. The PED strap must be designed to support a 2.2-pound (1.0 Kg) PED.

5. Placards indicating the 2.2-pound (1.0 Kg) load limit of the PED straps must be conspicuously posted.

6. The PED straps must not impede egress, including in emergency-exit passageways.

7. Instructions for Continued Airworthiness (ICA) must be incorporated into the design, including wear and stretch limitations, to ensure that strap wear is detected.

a. PED straps must be inspected every 4,000 flight hours to ensure that strap retraction and PED retention are maintained.

b. The strap must not protrude beyond the dress cover by more than 1 inch (2.54 cm) to ensure that passengers do not use the strap as a handle.

c. Defective head-rest covers must be changed in accordance with B/E Aerospace component maintenance manual (CMM) 25–20–82 (Millennium J

Class Seats) and CMM 25–21–42 (Innovator II Y Class Seats). Reference: Qantas Engineering Controlled Report C7246—B738 +6Y Reconfiguration 2015—Instruction for Continued Airworthiness.

Issued in Des Moines, Washington, on March 20, 2020.

James E. Wilborn,

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

[FR Doc. 2020–06362 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0283; Product Identifier 2018–SW–045–AD]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.A. 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 certain Leonardo S.p.A. (Leonardo) Model AB139 and AW139 helicopters. This proposed AD would require various inspections of the main rotor (M/R) damper, and depending on the inspection results, removing from service or replacing certain parts. This proposed AD would also require reducing the torque of the M/R damper hub attachment bolts, marking parts, installing a special washer, and installing a certain part-numbered M/R damper and prohibit installing other part-numbered M/R dampers. This proposed AD is prompted by reports of failed M/R dampers. The proposed actions are intended to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 1, 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–2020–0283; 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 Union Aviation Safety Agency (previously 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 Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* You may view 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: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@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 a series of superseded and revised ADs to correct an unsafe condition for Leonardo S.p.A. Helicopters (formerly Finmeccanica S.p.A., Helicopter Division (FHD), AgustaWestland S.p.A., Agusta S.p.A.), AgustaWestland Philadelphia Corporation (formerly Agusta Aerospace Corporation), Model AB139 and AW139 helicopters, all serial numbers (S/Ns) except S/Ns 31004, 31007, and 41237. EASA advises of multiple failures of M/R dampers part number (P/N) 3G6220V01351 and 3G6220V01352. EASA states that in some cases these failures occurred at the eye end and body lugs resulting in disconnection of the M/R damper in-flight. EASA further states that a combination of factors, including cracks on the M/R damper rod end and body end and in-service failure of the eye end and body lugs may have contributed to the M/R damper disconnections. Information issued by Leonardo advises of M/R damper cracking, loose rod ends, bearing rotation in the damper seat, and damage, incorrect engagement, and misalignment of the lag damper broached ring nut, particularly the broached ring teeth and the damper piston slots.

EASA states that this condition could result in loss of the lead-lag damping function of the M/R blade, damage to adjacent critical rotor components, and subsequent reduced control of the helicopter. EASA AD No. 2018–0112R1, dated June 4, 2018 (EASA AD 2018–0112R1), which is the most recent EASA AD, requires various one-time and repetitive inspections of the M/R damper, a torque check of the damper body end, and replacing any M/R damper with a crack or that fails the torque check. EASA AD 2018–0112R1 also requires replacing M/R damper P/N 3G6220V01351 and 3G6220V01352 with P/N 3G220V01353, as additional tests determined that M/R damper P/N 3G220V01353 does not need to be subject to inspections for cracks, provided it is removed from service before it reaches its retirement life.

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 Leonardo Helicopters Alert Service Bulletin No. 139–450, Revision C, dated April 10, 2018, which contains procedures for visual and dye penetrant inspections of the M/R damper for cracks and for verifying the torque of the M/R damper body ends (body ends).

The FAA also reviewed Leonardo Helicopters Alert Service Bulletin No. 139–452, Revision B, dated April 10, 2018, which contains procedures for reducing the body end nut torque.

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.

Proposed AD Requirements

This proposed AD would require compliance with certain procedures described in the manufacturer's service bulletin. Based on the helicopter's S/N and the M/R damper P/N installed, this proposed AD would require within 5 hours time-in-service (TIS) and thereafter before the first flight of each day:

- A repetitive visual inspection using a magnifying glass of the M/R damper rod end (rod end) and body ends for a crack, and depending on the inspection results, removing the rod end from service or replacing the M/R damper.
- A repetitive inspection of the rod and body end bearings for rotation in the damper seat and for misaligned slippage marks, and depending on the inspection results, removing from service the rod end or replacing the M/R damper.

This proposed AD would also require within 10 hours TIS:

- Reducing the installation torque of each hub attachment bolt for each M/R damper.

This proposed AD would also require within 30 hours TIS, before the M/R damper accumulates 300 hours TIS, or within 300 hours TIS since last overhaul, whichever occurs later:

- A dye penetrant inspection using a magnifying glass or eddy current inspection of the rod and body ends for a crack, and depending on the inspection results, removing from service the rod end and replacing the M/R damper, or marking the rod and body ends.

This proposed AD would require within 30 hours TIS and thereafter at intervals not to exceed 20 hours TIS until the M/R damper has accumulated 600 hours TIS:

- A repetitive visual inspection of the rod end broached ring nut for broken teeth, improper engagement, and misalignment, and depending on the inspection results, removing from service the broached ring nut.

This AD would require within 50 hours TIS and thereafter at intervals not to exceed 100 hours TIS:

- A repetitive inspection of the bearing friction torque value of the body and rod ends, and depending on the inspection results, removing from service the rod end or replacing the M/R damper.
- A repetitive inspection the M/R damper anti-rotation block (block), and depending on the inspection results, removing the block from service.

This AD would also require, within 50 hours TIS:

- If special washer P/N 3G6220A05052 is installed, aligning the rod ends and broached rings, and replacing any broached ring that cannot be aligned.
- If special washer P/N 3G6220A05052 is not installed, inspecting the broached rings for wear and damage, and depending on the inspection results, replacing the broached ring and installing a special washer.

This proposed AD would also require installing M/R damper P/N 3G220V01353, prohibit installing M/R damper P/N 3G6220V01351 and P/N 3G6220V01352 on any helicopter, and allow the installation of M/R damper P/N 3G220V01353 to serve as terminating action for all the repetitive requirements of this proposed AD.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires contacting the manufacturer under certain conditions, while this proposed AD would not.

Costs of Compliance

The FAA estimates that this proposed AD would affect 123 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.

Performing the M/R damper inspections would take about 24 work-hours, for an estimated cost of $2,040 per helicopter and $250,920 for the U.S. fleet, per inspection cycle.

Replacing a rod end would take about 3 work-hours and parts would cost about $500, for an estimated cost of $755 per rod end.

Replacing a broached ring and broached ring nut would take about 3 work-hours and parts would cost about $125, for an estimated cost of $380 per broached ring and broached ring nut.

Replacing an anti-rotation block would take about 3 work-hours and parts would cost about $50, for an estimated cost of $305 per anti-rotation block.

Replacing an M/R damper would take about 2 work-hours and parts would cost about $18,000, for an estimated cost of $18,170 per M/R damper.

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):

Leonardo S.p.A. Docket No. FAA–2020–0283; Product Identifier 2018–SW–045–AD.

(a) Applicability

This AD applies to Leonardo S.p.A. Model AB139 and AW139 helicopters, certificated in any category, all serial numbers (S/Ns) except S/Ns 31004, 31007, and 41237, with a main rotor (M/R) damper part number (P/N) 3G6220V01351, 3G6220V01352, or 3G6220V01353 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in an M/R damper, which if not detected and corrected, could result in seizure of the M/R damper, detachment of the M/R damper in-flight, and subsequent loss of control of the helicopter.

(c) Comments Due Date

The FAA must receive comments by June 1, 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

(1) For helicopters with M/R damper P/N 3G6220V01351 or 3G6220V01352, within 5 hours time-in-service (TIS) and thereafter before the first flight of each day:

(i) For helicopters with an M/R damper rod end (rod end) that has accumulated 300 or more hours TIS since new or since the last overhaul, using a mirror and a 5X or higher power magnifying glass, visually inspect each rod end for a crack in the areas shown in Figure 19 of Leonardo Helicopters Alert Service Bulletin No. 139–450, Revision C, dated April 10, 2018 (ASB 139–450). If there is a crack, before further flight, remove from service the rod end.

(ii) For helicopters with an M/R damper body end (body end) that have accumulated more than 1,200 hours TIS since new, before further flight, remove from service the body end.

(iii) For helicopters with a body end that has accumulated 300 or more hours TIS and less than 1,200 hours TIS since new or since the last overhaul, using a mirror and a 5X or higher power magnifying glass, inspect each body end for a crack in the areas shown in Figure 19 of ASB 139–450. If there is a crack, before further flight, replace the M/R damper.

(2) For all helicopters, within 10 hours TIS, reduce the torque of the nut on the bolt attaching each M/R damper to the M/R hub. Using as a reference Figure 1 of Leonardo Helicopters Alert Service Bulletin No. 139–452, Revision B, dated April 10, 2018 (ASB 139–452), on the body end of each M/R damper, remove the cotter pin from service, remove the nut from the bolt, and clean the threads of the bolt. Install the nut and apply a torque of 74.6 Nm to 88 Nm (55 lbf ft to 64.9 lbf ft). Install a new cotter pin and apply corrosion inhibitor (C002 or equivalent) to the cotter pin, nut, and washer.

(3) For helicopters with M/R damper P/N 3G6220V01351 or 3G6220V01352, within 30 hours TIS, before the M/R damper accumulates 300 hours TIS, or within 300 hours TIS since the last overhaul, whichever occurs later, inspect each rod end and body end for a crack in the areas shown in Figures 1 through 6 of ASB 139–450 by either performing a dye penetrant inspection using a 5X or higher power magnifying glass or using an eddy current inspection method performed by personnel qualified to at least Level 2 per the National Aerospace Standard 410 or equivalent requirements.

(i) If there is a crack on the body end, before further flight, replace the M/R damper.

(ii) If there is a crack on the rod end, before further flight, remove from service the rod end.

(iii) If there is no crack, before further flight, mark the rod end and body end with a dot of black polyurethane paint as depicted in Figure 7 of ASB 139–450.

(4) For helicopters with M/R damper P/N 3G6220V01351 or 3G6220V01352, perform the inspection in paragraph (e)(4)(iii) of this AD within the compliance times listed in paragraphs (e)(4)(i) and (ii) of this AD:

(i) For M/R dampers that have accumulated less than 300 hours TIS since new or since the last overhaul, within 30 hours TIS and thereafter at intervals not to exceed 10 hours TIS until the M/R damper accumulates up to 300 hours TIS; or

(ii) For M/R dampers that have accumulated 300 or more hours TIS since new or since the last overhaul, within 5 hours TIS and thereafter before the first flight of each day:

(iii) Inspect each rod end bearing and body end bearing for rotation in the damper seat and for misaligned slippage marks as shown in Figure 9 of ASB 139–450. If there is any bearing seat rotation or misaligned slippage mark in the rod end, before further flight, remove from service the rod end. If there is any bearing seat rotation or misaligned slippage mark in the body end, before further flight, replace the M/R damper.

(5) For helicopters with M/R damper P/N 3G6220V01351 or 3G6220V01352, within 30 hours TIS and thereafter at intervals not to exceed 20 hours TIS until the M/R damper has accumulated 600 hours TIS, visually inspect each rod end broached ring nut for broken teeth, proper engagement, and alignment as depicted in Figure 11 and shown in Figure 12 of ASB 139–450. If there is a broken tooth, improper engagement, or misalignment of the broached ring nut, before next flight, remove from service the broached ring nut.

(6) For helicopters with M/R damper P/N 3G6220V01351 or 3G6220V01352, within 50 hours TIS and thereafter at intervals not to exceed 100 hours TIS:

(i) Inspect the bearing friction torque value of each body end as depicted in ''View G'' of Figure 18 of ASB 139–450.

(A) If the torque value of the body end is more than 30.0 Nm (265.5 in lb), before further flight, replace the M/R damper.

(B) If the torque value of the body end is 30.0 Nm (265.5 in lb) or less, inspect the bearing friction torque value of the rod end as depicted in ''View H'' of Figure 18 of ASB 139–450. If the torque value of the rod end is more than 30.0 Nm (265.5 in lb), before further flight, remove from service the rod end.

(ii) Inspect each M/R damper anti-rotation block for wear by following paragraphs 4.3 through 4.3.7 of the Accomplishment Instructions, Part VI, of ASB 139–450. If there is wear, before further flight, remove from service the M/R damper anti-rotation block.

(7) For helicopters with M/R damper P/N 3G6220V01351 or 3G6220V01352, within 50 hours TIS, inspect each rod end to determine if special washer P/N 3G6220A05052 is installed:

(i) If special washer P/N 3G6220A05052 is installed, align each rod end and broached ring by applying a torque of 63 Nm (558 in lb) to 80 Nm (708 in lb). If the rod end and broached ring cannot be aligned, before further flight, replace the broached ring.

(ii) If special washer P/N 3G6220A05052 is not installed:

(A) Inspect each broached ring for wear and damage. Pay particular attention to the four pins that engage the piston grooves. If there is any wear or damage to the broached ring, before further flight, remove from service the broached ring. An example of an acceptable broached ring is shown in Figure 4, Annex A, of ASB 139–450.

(B) Install special washer P/N 3G6220A05052 before further flight.

(8) For helicopters with M/R damper P/N 3G6220V01351 or 3G6220V01352, and with M/R body end P/N M006–01H002–041or P/N M006–01H002–047 installed, within 30 hours TIS, or before the body end accumulates 1,200 hours TIS, whichever occurs later, replace the M/R damper with M/R damper P/N 3G6220V01353.

(9) After the effective date of this AD, do not install an M/R damper P/N 3G6220V01351 or P/N 3G6220V01352 on any helicopter.

(10) Replacing each M/R damper P/N 3G6220V01351 or P/N 3G6220V01352 with

an M/R damper P/N 3G6220V01353 in accordance with the instructions of Part II of ASB 139–452, constitutes terminating action for all repetitive actions required by this AD for that helicopter.

(f) 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: Matt Fuller, Senior 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.

(g) Additional Information

The subject of this AD is addressed in European Union Aviation Safety Agency (previously European Aviation Safety Agency) (EASA) AD No. 2018–0112R1, dated June 4, 2018. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6200, Main Rotor System.

Issued on March 25, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–06633 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0234; Airspace Docket No. 19–ANM–90]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Gold Beach, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet or more at Gold Beach Municipal Airport, Gold Beach, OR. The airspace is designed to accommodate a new IFR area navigation (RNAV) approach and IFR departure procedures at the airport, which will support the airport's transition from VFR to IFR operations. The first area will extend upward from 700 feet above the surface and the second area will extend upward from 1,200 feet above the surface. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before May 15, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0234; Airspace Docket No. 19–ANM–90, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0234; Airspace Docket No. 19–ANM–90''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E airspace extending upward from 700 feet or more above the surface at the Gold Beach Municipal Airport, Gold Beach, OR. The establishment of the new Class E airspace will support the airport's transition from VFR to IFR operations. Specifically, to the extent possible, it will contain IFR departures until reaching 1,200 feet above the surface and IFR arrivals when descending below 1,500 feet above the surface.

The first airspace area will extend upward from 700 feet above the surface within a 6.3-mile radius to the airport, and within 1 mile each side of the 325° bearing from the airport, extending from the 6.3-mile radius to 9.3 miles northwest of the airport.

The second airspace area will extend upward from 1,200 feet above the surface within a 15-mile radius of the Gold Beach Municipal Airport, excluding that airspace that extends beyond 12 miles from the coast.

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

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM OR E5 Gold Beach, OR

Gold Beach Municipal Airport, OR
(Lat. 42°24′55″ N, long. 124°25′30″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the airport, and within 1 mile each side of the 325° bearing from the airport, extending from the 6.3-mile radius to 9.3 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 15-mile radius of the Gold Beach Municipal Airport, excluding that airspace that extends beyond 12 miles from the coast.

Issued in Seattle, Washington, on March 25, 2020.

Shawn M. Kozica,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–06655 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0306; Airspace Docket No. 20–ASO–13]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airway V–52 in the Vicinity of Bowling Green, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airway V–52 due to the planned decommissioning of the VOR portion of the Bowling Green, KY, VOR/Tactical Air Navigation (VORTAC) navigation aid (NAVAID). The Bowling Green VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (VOR MON) program.

DATES: Comments must be received on or before May 15, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0306; Airspace Docket No. 20–ASO–13 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*. FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email:

fedreg.legal@nara.gov or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0306; Airspace Docket No. 20–ASO–13) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0306; Airspace Docket No. 20–ASO–13.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX, 76177.

Availability and Summary of Documents for Incorporation by Reference

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

Background

The FAA is planning to decommission the VOR portion of the Bowling Green, KY (BWG), VORTAC in September 2020. The Bowling Green VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Bowling Green VORTAC is planned for decommissioning, the DME portion is being retained with the ''BWG'' identifier. The air traffic service (ATS) routes affected by the Bowling Green VOR decommissioning are jet route J–6; VOR Federal airways V–5, V–49, V–52, and V–243; and RNAV route T–325. A separate NPRM was published in the **Federal Register** (85 FR 16585; March 24, 2020) for Docket No. FAA–2020–0188 to amend ATS routes J–6, V–5, V–49, V–243, and T–325. This NPRM proposes to amend V–52 due to the planned decommissioning of the VOR portion of the Bowling Green VORTAC.

With the planned decommissioning of the Bowling Green VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of V–52 within the affected area. As such, the proposed modification to V–52 would result in the airway segment south of the Central City, KY, VORTAC being removed.

To overcome the removal of the V–52 airway segment, the FAA plans to retain the current fix located along the affected airway segment to assist pilots and air traffic controllers already familiar with it, for navigation purposes. Additionally, the Bowling Green, KY, DME facility is planned to be retained and charted in its current location as a DME facility with the ''BWG'' identifier.

Instrument flight rules (IFR) traffic could use existing adjacent ATS route segments (including V–4, V–11, V–47, V–51, V–140, V–513, and T–325), file point-to-point using the fixes that will remain in place, or receive air traffic control radar vectors to continue operating through the affected area. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the air traffic services previously listed.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal airway V–52 due to the planned decommissioning of the VOR portion of the Bowling Green, KY, VORTAC. The proposed VOR Federal airway action is described below.

V–52: V–52 currently extends between the Des Moines, IA, VORTAC and the Livingston, TN, VOR/DME. The FAA proposes to remove the airway segment overlying the Bowling Green, KY, VORTAC between the Central City, KY, VORTAC and the Livingston, TN, VOR/DME. Additional changes to other portions of the airway have been proposed in a separate NPRM. The unaffected portions of the existing airway would remain as charted.

The NAVAID radials listed in the V–52 description below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–52 [Amended]

From Des Moines, IA; Ottumwa, IA; Quincy, IL; St. Louis, MO; Troy, IL; INT Troy 099° and Pocket City, IN, 311° radials; Pocket City; to Central City, KY.

* * * * *

Issued in Washington, DC, on March 26, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–06642 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AB54

[Docket ID ED–2019–OESE–0126]

Indian Education Discretionary Grant Programs; (Demonstration Grants for Indian Children and Youth Program)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Education (Department) proposes to revise the regulations that govern the Demonstration Grants for Indian Children and Youth Program (Demonstration program), authorized under title VI of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to implement changes to title VI resulting from the enactment of the Every Student Succeeds Act (ESSA). These proposed regulations would update, clarify, and improve the current regulations. The Secretary also proposes a new priority, and accompanying requirements and selection criteria, for applicants proposing to empower Tribes and families to decide which education services will best support their children to succeed in college and careers.

DATES: We must receive your comments on or before April 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 ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about these proposed regulations, address them to Bianca Williams, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W237, Washington, DC 20202–6110. Telephone: (202) 453–5671.

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

FOR FURTHER INFORMATION CONTACT: Bianca Williams, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W237, Washington, DC 20202–6110. Telephone: (202) 453–5671.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

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

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *Regulations.gov*. You may also inspect the comments in person at 400 Maryland Ave. SW, Room 3W327, Washington, DC 20202–6110, between 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Background

The Department proposes to revise the regulations that govern the Demonstration Grants for Indian Children and Youth Program authorized under title VI of ESEA to implement changes to title VI resulting from the enactment of ESSA and to better enable the Department and grantees to meet the objectives of the program. As described in the Tribal Consultation section of this document, Tribes favored expanding the ability of families to choose high-quality educational opportunities during recent consultation sessions on the topic. Accordingly, the Department proposes a new priority and accompanying requirements and selection criteria for applicants proposing to empower parents and students to choose education services best suited to their needs.

Applicants addressing the proposed priority on education choice would have the flexibility to determine which academic outcomes are most critical for students in their communities, including students with disabilities, in the overall effort to promote college and career readiness. Applicants would then identify education service options they believe are most likely to help students achieve those outcomes and provide parents and students with the options to choose the services best suited to their needs, while also allowing parents to request a particular service or provider not already identified. Under the proposed priority, applicants would propose to use grant funds to pay for the services that parents or students select. The applicant would need to explain how it would transfer funds directly to the selected service provider, such as an individual providing tutoring services or a service provider offering supplemental counseling, which could be through an online payment portal.

Because Tribes are not the only eligible applicants for the Demonstration Grants program, we propose to require a non-Tribal applicant addressing the proposed priority to partner with a Tribe. If the student population to be served by the applicant consists of students from multiple Tribes and less than half of the students to be served are from one Tribe, the applicant could partner with a Tribal organization rather than a Tribe. We note that for projects that will serve primarily students who are members of federally recognized Tribes, grantees would be required to give preference in hiring and contracting to Indian persons and entities. (25 U.S.C. 5307(b); 34 CFR 263.23)

Under the proposed priority, the grantee, or the non-Tribal grantee and its partnering Tribe, would identify the services and specific providers from which parents and students would choose and institute a method by which a parent may request a service or provider not included among those identified by the grantee or partnering Tribe. If a grantee or Tribe does not permit the provider or service a parent requests, it must explain in writing to the parent the rationale for that denial. The grantee would set up a service selection method, such as an online portal, walk-in center, or other method by which parents and students would choose from the list of preapproved providers.

The proposed priority would recognize Tribal sovereignty by giving Tribes a lead role in identifying both the range of services to be provided and the pre-approved providers of those services. For example, one Tribe may determine, based on an analysis of community-level data, that its largest barrier to student success is the lack of school counseling services and mentoring in schools attended by its students. That Tribe could then enter into agreements with entities that would provide students with access to individual counseling services or mentoring when selected by students and parents. As another example, a Tribal applicant may determine that its greatest local need is improving the high school graduation rate. That Tribe could select multiple services and providers to meet that project objective, such as tutoring, and courses provided by a community college from which a parent could choose. Applicants can identify multiple project objectives.

For all proposed projects, we propose language in this priority that would require services to be supplemental to existing school services and existing funding sources. For example, if there is an existing Native American language course during the school day, grant funds could not be used to pay for the existing teacher but could be used to expand the number of educators offering language classes. Grantees could also establish a new after-school Native American language instruction program.

We would permit applicants addressing the proposed priority to request a planning period within the first year of funding to allow grantees to develop a service selection process and finalize written agreements with service providers before beginning implementation.

We note that, under ESEA section 6121(e), no more than five percent of funds awarded for a grant under this program may be used for administrative purposes, and for grants made using FY 2020 funds this administrative cost cap applies only to direct administrative costs, not indirect costs.

As further described in the proposed regulation, we propose in § 263.25(h) to require grantees to spend at least 80 percent of their grant funds on direct services to eligible students. If applicants propose a planning year in the first year of the grant, this 80 percent limit would not apply to that first year. Grantees would also be prohibited from spending more than 15 percent of grant funds on the service selection method or the parent involvement and feedback process.

We invite comment specifically on the following issues:

(1) We are interested in ensuring that we review all applications in a fair and equitable manner. Would asking applicants to self-select into ''rural'' and ''non-rural'' categories help ensure we fairly evaluate applicants with greater or fewer relevant resources to support this work? If not, are there other ways for the Department to objectively and fairly consider applicants?

(2) The Department is considering establishing new performance measures for this program under the Government Performance and Results Act of 1993 (GPRA). While we are not required to seek comment on GPRA performance measures, the Department believes the development of effective performance measures can benefit from public input and invites public comment to help

inform the final performance measures for this program. Although the Department will consider the public comments, the Department is not limited by the terms of the proposed performance measures or public comment on those measures in establishing final performance measures. We specifically invite comment on whether the following measures would provide meaningful data, and also on the feasibility for grantees of collecting and reporting data that would inform the measures:

A. The total number of options offered through the project from which participating students can choose.

B. The percentage of options offered through the project from which participating students can choose education-related services that are culturally relevant, as determined by the grantee.

C. The number of grantees that met their educational outcomes objective(s) (*e.g.,* decreased school suspension rates, increased graduation rates), as defined by the grantee.

D. The total number of students served.

E. The percentage of parents who report that the number, variety, and quality of options offered meet their children's needs.

F. The average time it took a grantee to respond to requests for specific services.

G. The percentage of parent requests for additional services that resulted in adding new services to the offerings (submission should include both numerator and denominator).

(3) The Department is considering conducting a national study of the Demonstration program to learn more about how grantees expand educational choice in Tribal communities. How might the Department best implement such a study to yield helpful information about promising practices related to increased educational choice?

Tribal Consultation

The Department solicited Tribal input on whether to add a new priority focused on educational choice to the Demonstration Grants for Indian Children and Youth Program by issuing several email messages to Tribal leaders from each of the federally recognized Indian Tribes, all Tribal College or University (TCU) presidents, current grantees under ESEA title VI formula and discretionary grant programs, and other stakeholders.

The Department held a blended in-person and virtual Tribal consultation in Seattle on May 2, 2019, and another in Washington DC, on May 7, 2019, and continued to solicit Tribal comment through June 7, 2019, through the *tribalconsultation@ed.gov* mailbox. Specifically, we sought input on whether to add a priority to this program that would allow for opportunities for grantees to give students and parents more choice in deciding which education services will better help their children become ready to succeed in college and careers, and on the best ways to design and implement such a program, taking into account the current needs of Indian students for such services, the capacity of eligible entities to implement such a program, and the types of education options currently available to help Indian children become ready to succeed in college and career.

The Department requested responses to nine specific questions. We list each question below, followed by a summary of the input we received from the in-person and virtual consultations and from written comments, and provide our response. Several of the written comments provided helpful suggestions for improvement of the proposed priority, and we have incorporated several of the suggestions into these proposed regulations, as indicated below.

1. Do you support a priority to permit grantees to operate a project through which parents of eligible Indian students could choose education services for their child, from a list of Tribally chosen education services?

In total, 63 comments on this topic were received, a majority of which were in favor. The comments in opposition included helpful suggestions for improving the priority.

One Tribe stated in its written comments that it does not have either State-funded charter schools or private schools in its service area, and there are no commercial options that are culturally relevant. The proposed priority would not require that specific education options, such as charter schools or private schools, be present for an applicant to receive a grant. Applicants would be able to propose services that meet the needs of the local community.

Several Tribal participants objected to using contractors for services rather than letting the Tribe provide all services; one stated that it would be preferable to use the funds to build Tribal capacity for providing all services. Under the proposed priority, applicants could propose to provide services directly, but would also need to name at least one independent provider of the proposed services. Applicants would be required to enter into written agreements with service providers, other than the applicant, to ensure accountability of the funds and oversight of services. If Tribes are interested in grants that support building capacity to administer education programs, the Department also offers grants through the State Tribal Education Partnership grants.

2. Which of the following possible services would your Tribe be interested in including in such a project?

a. Native language, history, or culture courses.

b. Advanced, remedial, and elective courses, including those offered exclusively online.

c. Apprenticeships and industry certifications.

d. Concurrent and dual enrollment.

e. Private or home education.

f. Special education or related services such as speech or physical therapy.

g. Education technology, including learning software or hardware.

h. Transportation needed to access supplemental school services, such as after-school or summer services.

i. Tutoring, especially for students in low-performing schools.

j. Summer and after-school education programs.

k. Testing preparation and fees and application fees.

Tribal leaders expressed interest in all of these services, although the ones most favored were Native language, history, or culture (a), tutoring, especially for students in low-performing schools (i), summer and after-school education programs (j), and apprenticeships and industry certifications (c). Several Tribal leaders also emphasized the importance of transportation (h), including being able to support student travel for summer and after-school opportunities, such as a late bus.

One Tribe submitted written comments expressing opposition to including home schooling as a service that could be funded under the proposed priority because in its State there is limited support or monitoring to ensure that home-schooled children are being educated. In addition, the Tribe stated that, instead of permitting tutoring services, the focus should be on improved teaching. The proposed priority would allow home schooling to be an option, but would not require applicants to offer home schooling under their project. Additionally, while this proposed priority could not support educator professional development since it focuses on expanding the ability of families to choose high-quality educational opportunities, the

Department shares the commenter's interest with regard to improving instruction. The Department also provides Indian Education Professional Development grants to train Indian individuals to become effective teachers and administrators serving Indian students.

Another Tribe opposed the idea of encouraging parents to choose off-reservation schools for their students. The proposed priority would not require applicants to offer any particular services from the list above; rather, the applicant would choose which services to offer to parents based on the needs of the local community and would establish a method by which a parent may request a service not included on such a list. The list of services in this consultation question was provided to illustrate examples of the types of services an applicant might consider.

One Tribe stated that online courses do not have appropriate content for the Tribe's needs but that a hybrid of online and on-site project-based learning would be invaluable. We think that Tribes are best suited to determine a range of education options that would work well for students in their community and that parents are best suited to select services for their children. We note that the model described by the commenter could satisfy the proposed priority.

3. Are there any other education services that you would be interested in including in a project?

At the Seattle consultation, several participants suggested that student counseling services be included in the list, due to the lack of school mental health or counseling services in Indian country. We have added individual counseling as a service that could be included, provided it would be supplemental to existing services. Additionally, grantees would need to offer more than one type of service.

Participants also suggested we allow grantees to spend grant funds on books and other materials. Books and other materials would be an allowable cost for certain services from which parents could choose under the proposed priority, for example, for homeschooling or afterschool reading services.

One Tribe stated in its written comments that it would be interested in using funds for curricula that address decolonization and resiliency programming. The option to select services that teach these topics could be provided as a service choice to parents under the proposed priority; the Department does not dictate curricula.

Another Tribe suggested that we add intensive in-service professional development in literacy for grades pre-K through 4. As described above, the Department shares the commenter's interest with regard to improving instruction. The Department also provides Indian Education Professional Development grants to train Indian individuals to become effective teachers and administrators serving Indian students. Educators supported by the Professional Development program can include those focused on literacy in grades pre-K through 4. In addition, Indian Education formula grants to LEAs can support educator professional development, including for literacy educators in grades pre-K through 4. The proposed priority would focus on services that parents could choose rather than ones that schools provide to all teachers.

One Tribe suggested that we permit certifications and trainings given by Tribal governments to build the next generation of Tribal administrators. Assuming that this service would target high school students and not postsecondary adult learners, this could be a possible service that parents could choose, if it met the local needs of the community.

One Tribal leader suggested that the funds be used to support student participation in after-school sports, arts, and music programs. Because the purpose of the Demonstration grant program is to improve educational opportunities and achievement of Indian children and youth, the proposed priority would permit the use of funds for such activities if the applicant can demonstrate that the activity is culturally relevant or is supported by evidence that ties the activity to relevant education outcomes, and if there is parental interest in the activity.

4. From the list in question 2 above, which are currently available in your area? Are the current options adequate, and are there adequate secular options in your area?

Responses on the issue of current availability varied a great deal depending on the size and location of the Tribe. Many current Demonstration grantees felt that, given their local graduation and dropout rates, even if some of the services are currently being offered, the options provided are insufficient to meet demand. One Tribe noted it currently offers home education and special education services and therapies; however, the local community is greatly lacking in Native American language courses, advanced and remedial academic courses, access to online courses, summer educational programs, and transportation services for after-school programs. We did not receive any responses to the specific question about secular options.

5. To ensure accountability and allowability of expenses, should the Tribe be responsible for approving providers of the education services? Do you have other ideas for how to ensure that funds are spent on allowable expenses?

Most Tribal leaders supported the concept that Tribes be responsible for approving service providers, although several participants opposed the idea, stating that if a non-Tribal applicant receives a grant, it should be the responsible party, rather than putting the burden on the partnering Tribe to select or approve providers. One commenter suggested in its written comments that the grantee be responsible, through a subcommittee, rather than requiring the Tribe to be responsible. Under the proposed priority, a Tribal applicant would choose the project focus and specific services based on local needs, but for a non-Tribal applicant, such as a State educational agency (SEA), the applicant and its Tribal partner would jointly make these decisions.

One Tribe suggested in its written comments that, to ensure funds are spent on allowable expenses, the approved providers should provide pre- and post-project assessment data, including student and parent perception surveys as well as budget line-items and budget summaries. We have incorporated this suggestion into a proposed selection criterion under which applicants would be awarded points based on the extent to which the project is designed to improve student and family satisfaction with the student's overall education experience through means such as pre- and post-project surveys. We note that applicants for all Department discretionary grant programs are required to submit detailed information about their proposed budgets (34 CFR 75.117), so we do not need program-specific regulations on that point.

Another Tribe stated that service providers should go through a competitive process at the local level. One Tribe stated that services should be approved for a limited period of time, subject to review and renewal by the Tribe. We think that applicants will be in the best position to determine how to appropriately select providers while also giving parents the option to request a provider not included on an approved list, subject to written approval or disapproval by the grantee. The selection and oversight process would be up to the applicant to design under the proposed priority, consistent with applicable procurement policies.

Another Tribe that is a current Demonstration program grantee wrote in favor of the proposed priority and suggested that projects include a liaison with parents to address issues and mediate disputes, such as in situations in which a parent is unhappy with the services provided. We have added a proposed requirement for a parent feedback process under this priority. In addition, we note that an applicant could establish a parent liaison position to support this important work, which we propose to include in § 263.25 as an example of ways an applicant may implement parent outreach. Such a role would be especially helpful in assisting grantees as they identify options parents can select, or in responding to requests for specific services from individual parents. An individual serving as a parent liaison could also assist with outreach and communications to parents regarding the availability of services through this program.

6. The Department is considering incentivizing or requiring grantees to establish a website (which could be managed through a contractor) that would allow families to choose how to apply an allotted stipend to certain preapproved education expenses, so that families would not receive payments directly. Do you support the inclusion of such an incentive or requirement for a website in the new priority? Would families have internet access to make that feasible?

Tribal leaders were generally opposed to requiring grantees to create a website portal for families to choose services; they preferred that it be an option, due to lack of internet availability in many areas. However, one participant stated that an online portal would make it easier for parents to choose services and would improve accountability.

One Tribal leader was concerned that requiring grantees to contract with a third party would create additional unnecessary bureaucracy and stated that the Tribe already has a system for paying vendors. Some stated that a better way to have parents select services would be at community meetings, or through home visits. Accordingly, we are not proposing to require service selection systems to be web-based. Tribes could create or use existing systems or websites or use a different method for choosing services that better fits the needs of their community. Regardless of the mechanism, applicants should ensure that parents are empowered to select individual services for each participating student. These services selected will likely vary among participating students.

7. Should the new priority require eligible entities that are not Tribal (*e.g.,* State educational agencies (SEAs) or LEAs) to partner with a Tribe, Indian organization, or TCU?

Comments were uniformly in favor of requiring non-Tribal applicants to partner with a Tribe. Several written comments urged that we permit only Tribes to be lead applicants. We cannot restrict the statutory eligibility for this program, which permits SEAs and LEAs to apply, in addition to Tribally connected entities (*i.e.,* Tribes, TCUs, Bureau of Indian Education (BIE)-funded schools, and Indian organizations). We propose requiring an applicant that is not a Tribe to partner with a Tribe if it proposes to serve primarily students from that Tribe; if it proposes to serve students from many different Tribes, the applicant would be required to partner with a Tribally connected entity.

One Tribe suggested that the proposed priority would create a risk that a non-Tribal entity could target a vulnerable Indian school population for monetary gain while providing poor-quality services. Under the proposed priority, the grantee would be responsible for overseeing all providers and ensuring quality. We have added to the proposed requirements a plan for how the applicant would oversee service providers and ensure that students are receiving high-quality services under the project, and a description, in the requirement for an agreement with providers, of how the grantee will hold the provider accountable to the terms of the agreement. We have also proposed a selection factor evaluating the quality of an applicant's proposed plan to oversee the service providers.

8. How should grant amounts be determined?

a. Should the grant amounts for projects planning to fund a full-time education program be based on a percentage of the per-pupil expenditure in your area or State multiplied by the number of students to be served?

One Tribe, in its written comments, opposed this idea on the basis that per-pupil expenditures do not consider local and geographic constraints; another stated that due to differences between urban and rural areas, consideration should be given to regional rather than State-average expenditures. Accordingly, we propose a selection criterion related to the way an applicant determines the appropriate requested amount for their projects, which should generally reflect the average per-pupil amount to be made available, and the number of students whom the applicant intends to serve.

b. How should grant amounts for applicants who propose to provide supplemental services be calculated?

One Tribal leader stated that this should be based on the Tribe's capacity and budget. We agree.

c. On what other factors should the budget be based?

One Tribe suggested in its written comments that in awarding grants we use the factors of innovation, reproducibility, and post-grant sustainability. We agree that the ability to sustain the project following the grant period, as well as the applicant's plans and ability to share the project design and results with others, are important considerations, and we will take those into account when choosing which selection criteria to include in the NIA.

9. What other considerations should go into the design of this priority?

Several Tribes commented that the program should reflect Tribal sovereignty, in particular the sovereign right to determine education programming and services. We agree with these comments and have drafted the proposed priority in a way that we believe reflects Tribal sovereignty, but we welcome feedback on the specific language in the proposed regulations.

One Tribe suggested that we consider urban and rural applicants separately, as rural applicants often face higher costs and have fewer existing resources, and that we consider the applicant's capacity and infrastructure. Another stated that we should take into account a Tribe's existing capacity. The existing regulations already include a priority for rural applicants, so we are not proposing such a priority for rural applicants in this NPRM. We are proposing a priority for applicants who do not meet the existing rural priority; this proposed ''non-rural'' priority would allow us to consider rural and non-rural applicants separately in future competitions. We have included in this NPRM a targeted question regarding whether differentiating between rural and non-rural applicants is an appropriate proxy for discerning between applicants with limited resources and applicants with multiple resources.

Another Tribe that is a current Demonstration grantee, writing in favor of the proposed priority, stated that the Department should consider outcomes as a factor when making award decisions, and that continued communication and ongoing feedback should be used for planning and implementation of the projects. We agree that measurable project objectives and clear plans for continuous improvement should be important parts of an applicant's proposal and will consider including selection criteria in the NIA to ensure that peer reviewers consider these factors.

Significant Proposed Regulations

We group major issues according to section of the regulations.

What definitions apply to the Demonstration Grants for Indian Children and Youth program? (§ 263.20)

Statute: ESEA section 6121(d)(3) requires that applications include a description of how parents and family of Indian children have been and will be involved in implementing the project activities. ESEA section 8101(38) contains a definition of ''parent.''

Current Regulations: The current regulations do not define ''parent.''

Proposed Regulations: We propose to add the definition of ''parent'' from section 8101 of the ESEA.

Reasons: We propose to add the ESEA definition of ''parent'' to make it clear that the term includes a legal guardian or other person standing in loco parentis, such as a grandparent *(§ 263.20).*

What priority is given to certain projects and applicants? (§ 263.21)

Statute: ESEA section 6121(a) provides that the purpose of the program is to support projects to develop, test, and demonstrate the effectiveness of services and programs to improve education opportunities and achievement of Indian children and youth. Section 6143 requires the Secretary to give a preference to Indian Tribes, Tribal organizations, and TCUs in making grants under this program.

Current Regulations: Section 263.21 contains three mandatory priorities in paragraphs (a) and (b), and five optional priorities in paragraph (c) that the Secretary may choose in any year in which there is a new competition.

Proposed Regulations: We propose to add BIE-funded schools to the list of entities in § 263.21(b)(1) that receive competitive preference. We also propose to add a priority in § 263.21(c) for entities that are not rural, that is, that do not meet the existing priority for rural entities.

In addition, we propose to add a priority for projects that would expand educational choice for parents, allowing them to direct funding to particular education services to expand the ability of parents to choose high-quality educational opportunities to meet the needs of Native youth. The requirements pertaining to this proposed priority would be in a new § 263.25.

Reasons: We propose to add BIE-funded schools to the list of entities for which we give competitive preference in order to clarify in the regulations our long-standing interpretation of section 6143 of the ESEA in this regard. That statutory provision requires that, in making grants under the Demonstration program as well as under certain other programs, the Department must give preference to Indian tribes, organizations, and institutions of higher education. The Department treats all BIE-funded schools as ''Indian organizations'' for purposes of this provision, and this regulation would provide clarity to applicants that are BIE-funded schools.

We propose to add a priority for entities that do not meet the existing rural priority in order to give the Department the ability to consider rural and non-rural applicants separately. The regulations already contain a priority for rural applicants in § 263.21(c). The proposed priority would define the inverse population and would be used in conjunction with the priority for rural applicants; the Department could use multiple absolute priorities to create separate funding slates for applicants that propose to serve rural communities compared with applicants that do not. This would give the Department the ability to distribute the grants fairly among high-scoring rural and non-rural applicants, so as not to disadvantage rural entities that may not have access to the same resources as non-rural applicants.

We propose the new educational choice priority in order to support Tribal communities in designing projects to meet their goals and objectives while giving parents the opportunity to select the specific services that best meet the needs of their own children. Under the priority used in the Demonstration Grants program for fiscal years (FY) 2015–2018, the Native Youth Community Projects, the applicant, whether an LEA, a Tribe, or a Tribal organization, designed the objectives and services and arranged to provide those services. The proposed priority would include parents and families in the decision-making process by providing them with a choice of services or of service providers, consistent with the statutory provision in section 6121(d)(3) of the ESEA that requires all applicants for Demonstration Grants to describe how parents and families of Indian children will be involved in developing and implementing the activities in each project.

The proposed priority would give to Tribes and other grantees the ability to select local entities that can provide high-quality services to students. The grantee would enter into a contract with these providers and oversee the providers to ensure quality. Parents would then select the specific service(s) and provider(s) for their child. The grantee would also establish a process by which a parent may request a service or provider not specifically offered. The process would include a response, in writing, from the grantee to the parent if such a request cannot be accommodated, which must explain the reason for denying the request, as further described in new § 263.25.

We are not proposing to remove any of the existing priorities from the regulations. The new proposed priority would be added to the regulations to provide an additional option from which the Department may choose, for any competition under the Demonstration Grants program. Because the purpose of the Demonstration Grants program is to test and demonstrate the effectiveness of various programs in improving education opportunities and achievement of Indian children and youth, adding this proposed priority would provide a new way to potentially improve outcomes and may provide the Department with new information to disseminate to the field to inform future local efforts to improve students' outcomes. The details of this proposed priority, as reflected in these proposed regulations, were informed by the Tribal consultations held on this topic.

What are the application requirements for these grants? (§ 263.22)

Statute: ESEA section 6121 includes four specific application requirements, in addition to other assurances and information as the Secretary may reasonably require.

Current Regulations: Section 263.22 contains the statutory application requirements.

Proposed Regulations: We propose to add two application requirements in new § 263.22(b)(4) that could be used in any year, although they are designed to accompany the proposed priority for educational choice. Under the first proposed application requirement, a non-Tribal applicant would be required to partner with a Tribe or Tribal organization in order to receive a grant; if 50 percent or more of the students to be served are from one Tribe, the application must include that Tribe as a partner. If the majority of students are from different Tribes, however, then the applicant could choose as a partner a single local Tribe, local or national

Tribal organization, a TCU, or a BIE-funded school. Under the second proposed application requirement, an applicant would be required to include in its application a plan for how the applicant will oversee service providers and ensure that students are receiving high-quality services under the project.

Reasons: We agree with the input received from Tribes during consultation that, in order to maximize opportunities for Tribal sovereignty, projects that serve Native students must include a Tribal partner. We propose the 50 percent cutoff for Tribal affiliation in order to provide clear guidance for applicants that are not Tribes regarding when they are required to partner with a specific Tribe. We chose 50 percent because that is the percentage of the school district enrollment that is set forth in section 8538 of the ESEA to distinguish school districts that must consult with Tribes from those that do not. To the extent that certain areas lack local Tribal organizations, we acknowledge that an applicant might need to partner with a national Tribal organization. We propose the requirement that applicants provide a plan to oversee service providers in order to ensure that applicants carry out their oversight responsibilities and that students receive high-quality services.

How does the Secretary evaluate applications for the Demonstration grant program? (§ 263.24)

Statute: ESEA section 6121 does not include selection criteria.

Current Regulations: The current regulations do not include selection criteria for this program.

Proposed Regulations: Proposed § 263.24 would add three selection criteria, for this program. Under the selection criterion relating to project services, we propose three selection factors. The proposed selection factor in § 263.24(a)(1), which would be specific to the priority for educational choice, would allow us to evaluate an application based on the extent to which the project would offer high-quality choices of services, including culturally relevant services, and providers that build on existing options. The second and third proposed selection factors could be applied regardless of which priority is used: the factor in § 263.24(a)(2) would require applicants to describe the extent to which the services to be offered meet the needs of the local population, as demonstrated by an analysis of community-level data, including input from students and/or parents; the factor in § 263.24(a)(3) would allow applications to be judged on the quality of their response to the statutory provision in section 6121(d)(3) of the ESEA regarding evidence-based projects. The definition of ''evidence-based'' in section § 77.1 would apply; this definition includes all four levels of evidence: strong, moderate, and promising evidence as well as evidence that demonstrates a rationale. The definition of ''demonstrates a rationale'' in the same section clarifies that it ''means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.'' Accordingly, an applicant may provide a logic model for the proposed project, including at least one component informed by research, and receive points under this proposed criterion.

We propose four selection factors under the criterion relating to project design. One proposed factor could be used with any priority and would allow us to evaluate applicants based on the extent to which their project is designed to improve student and parent satisfaction with the student's overall education experience through pre- and post-project data. Two of the proposed factors would be specific to the priority for educational choice and would ask applicants to describe (1) their process for selecting providers and (2) their method for informing parents of the choices available to them. The fourth proposed factor would allow us to evaluate the quality of the applicant's plan to oversee service providers and ensure that students are receiving high-quality services under the project.

Finally, we propose a selection criterion relating to reasonableness of budget, with two sub criteria. The first relates to the reasonableness of the proposed per-pupil amount for services in relation to the project objectives, and the second concerns the transparency of those per-pupil costs for parents.

Reasons: By establishing in the regulations selection factors that are tailored to the needs of Tribal applicants, the Department would have the ability to choose, in any grant competition, from the unique selection criteria established through these proposed regulations as well as from the general selection criteria in 34 CFR 75.210.

What are the program requirements when the Secretary uses the priority for educational choice in § 263.21(c)(7)? (§ 263.25)

Statute: ESEA section 6121 does not address educational choice.

Current Regulations: The current regulations do not address educational choice.

Proposed Regulations: Proposed § 263.25 would add eight requirements that would apply to any competition in which the Secretary uses the proposed priority for educational choice. Section 263.25(a) would require grantees to choose a project focus and specific service providers that are based on the needs of the local community. In § 263.25(b) we propose to require grantees to offer more than one education-related option for services from among the twelve listed in that paragraph. Multiple service providers may address a single education-related option. Separately, we propose in § 263.26(d) to require multiple service providers, including service providers that are not the applicant, though the applicant may also provide services. We propose in § 263.25(c) to ensure that all services would supplement and not supplant existing services and funding sources.

We further propose in § 263.26(d) to require grantees to establish a method through which parents could select from various services and providers tailored to the project objective. The service selection method could not include direct financial transfers to parents. Grantees would also be required under proposed § 263.25(e) to have a system in place for parents to advocate for services their children need, such as a parent feedback process, that would require the grantee to provide a written explanation for not providing the requested service; the explanations would need to be provided within thirty (30) days.

We also propose in § 263.25(f) a requirement that grantees enter into a written agreement with each service provider under the project, and that the agreement include a nondiscrimination clause, including a provision prohibiting the provider from discriminating against Indian students who are eligible for services under this program on the basis of affiliation with a particular Tribe. The agreement would also be required to contain a description of the oversight to be provided by the grantee, a description of how students' progress will be measured, and provide for the termination of the agreement if the provider is unable to meet the terms of the agreement.

In the event that the number of requests from parents of eligible students for services under the project exceeds the available capacity, we would require in proposed § 263.25(g) that the grantee or provider include a fair and documented process to choose students to be served, such as a lottery, or another transparent set of consistently-applied criteria, such as first-come, first-served, or need-based criteria.

Finally, we propose in § 263.25(h) to require grantees to spend at least 80 percent of their grant funds on direct services to eligible students. If applicants propose a planning year in the first year of the grant, this 80 percent limit would not apply to that first year. Grantees would also be prohibited from spending more than 15 percent of grant funds on the service selection method or the parent involvement and feedback process described in paragraph (e) of this section. If an applicant proposes a planning year in the first year of the grant, this 15 percent limit would not apply to that first year.

Reasons: We propose to require that services be based on local needs because we heard from Tribes that it is important that projects be tailored to the unique needs of each community. We propose the requirement that grantees offer more than one specific service to ensure that families have adequate choices. We propose to require that services supplement existing options in the community to ensure that these funds are not used to supplant other funding sources that already exist. We propose to require a service selection method to help ensure that grantees have a carefully planned administrative system through which parents can access the services. It is important that grant funds go only to service providers and not the parents, as there will be an agreement with service providers that includes expectations for reporting activities and financial oversight. We propose to require a system for parent input, in response to suggestions from Tribal consultation, to ensure that parent voices are heard and responded to with regard to quality of services, the administrative convenience of the system, choice of providers and specific services, and other matters. This system must include a mechanism by which parents can request specific services or providers and receive responses in writing indicating the reason for denying any request the grantee cannot satisfy.

We propose to require that grantees enter into written agreements with each provider to ensure that grantees have the necessary programmatic and fiscal oversight of all services under the project and that grantees and providers are held accountable to the terms of the agreement. In addition, the proposed requirement that agreements include a nondiscrimination clause, including a provision prohibiting the service provider from giving priority to members of one Tribe over another, is designed to ensure that all American Indian and Alaska Native students who are eligible for services under this program (pursuant to the definition of Indian in ESEA section 6151) have an equal opportunity to obtain services. We propose the requirement of a fair and documented selection process, such as a lottery, to ensure there would be no favoritism in choosing which students are included in the project.

We propose that at least 80 percent of grant funds be used for direct services so that most of the grant funds are used to support services for students, not to implement the service selection process. Under the proposed rule, grantees could use up to 15 percent of the award for the service selection method or the parent involvement and feedback process. We propose that the 80 percent requirement would not apply in the planning year, if the grantee requests and obtains permission for the first year of the grant to be used for planning, because we understand that setting up a service selection method can require a large amount of funds at the start of the grant that would not be continued in subsequent years. Thus, if a grantee uses the first year of the grant as a planning year, it will not have its costs limited to a total of 20 percent of the grant for the service selection method, its indirect cost rate, and its direct administrative costs, as will be the case in future grant years.

Technical Changes

We are also making minor technical changes to these program regulations, some of which are required to align the regulations with the ESEA, as amended by ESSA. The technical changes to align the regulations with the ESSA amendments to title VI of ESEA are as follows:

1. We add ''and youth'' to the name of the program in the title for subpart B of part 263, in the title of § 263.20, and in the definitions in § 263.20, to align with ESEA section 6121(a)(1).

2. In § 263.20, we delete the definition of ''Indian institution of higher education'' and replace it with the statutory definition of ''Tribal college or university,'' and make conforming changes to § 263.21, in alignment with ESEA section 6121(b).

3. In § 263.22, we add to the application requirements the expansion from involvement of parents to include family members, and we change ''scientifically-based'' to ''evidence-based,'' in alignment with ESEA section 6121(d)(3)(B).

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

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

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

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

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

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

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

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment, or otherwise promulgates, that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. The proposed regulations are not a significant regulatory action. Therefore, the requirements of Executive Order 13771 do not apply.

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

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

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

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

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

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

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

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

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

Discussion of Costs and Benefits

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. The potential costs associated with the proposed priorities and requirements would be minimal, while the potential benefits are significant.

We have determined that these proposed regulations would impose minimal costs on eligible applicants. Program participation is voluntary, and the costs imposed on applicants by these proposed regulations would be limited to paperwork burden related to preparing an application. The potential benefits of implementing the programs—for example, expanding the choices available to parents and students, and improving access to services such as Native language programs or providing new internship or apprenticeship programs—would outweigh any costs incurred by applicants, and the costs of carrying out activities associated with the application would be paid for with program funds. For these reasons, we have determined that the costs of implementation would not be excessively burdensome for eligible applicants, including small entities.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, ''§ 263.2 What definitions apply to the Demonstration Grants for Indian Children and Youth program?'')
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are LEAs, TCUs, Tribes, Indian organizations, and BIE-funded schools receiving Federal funds under this program. The proposed regulations would not have a significant economic impact on the small entities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. Participation in the Demonstration Grant program is voluntary and the Department believes that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and selection criteria would be limited to the costs related to providing the documentation outlined in the proposed definitions and requirements when preparing an application and that those costs would not be significant. We note that those grantees that would be subject to the minimal requirements that these proposed regulations would impose would be able to meet the costs of compliance using Federal funds provided through the Indian Education Demonstration Grant program.

However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Indian Education Demonstration Grant program. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Proposed §§ 263.22 (Application Requirements) and 263.24 (Selection Criteria) contain information collection requirements (ICR) for the program application package. As a result of the proposed revisions to these sections, we would transfer the grant application package information collection burden from 1810–0722 to 1894–0006, resulting in discontinuation of 1810–0722. In Table 1 below, we assume 100 applicants each spend 30 hours preparing their applications.

TABLE 1—DEMONSTRATION GRANTS PROGRAM INFORMATION COLLECTION STATUS

OMB control No.	Relevant regulations	Expiration	Current burden (total hours)	Proposed burden (total hours)	Proposed action under final rule
1810–0722	Proposed §§ 263.22 and 263.24.	07/31/2021	For Applicants: 4,000 hours.	0	Discontinue by 07/31/2021.
1894–0006	Proposed §§ 263.22 and 263.24.	January 31, 2021	0	Applicants: 3,000 hours	Obtain approval under 1894–0006.

If your comments relate to the ICR for these proposed regulations, please specify the Docket ID number and indicate ''Information Collection Comments'' on the top of your comments.

Written requests for information or comments, submitted by postal mail or delivery, related to the information collection requirements should be addressed to the Director of the Information Collection Clearance Program, U.S. Department of Education, 550 12th Street SW, Room 9086, Washington, DC 20202.

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

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

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means 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. These proposed regulations may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

Assessment of Education Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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 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 for free on 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.

(Catalog of Federal Domestic Assistance Number: 84.299A Demonstration Grants for Indian Children and Youth Program.)

List of Subjects in 34 CFR Part 263

Business and industry, Colleges and Universities, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 263 of title 34 of the Code of the Federal Regulations as follows:

■ 1. The authority citation for Part 263 continues to read as follows:

Authority: 20 U.S.C. 7441, unless otherwise noted.

■ 2. The title of subpart B is revised to read as follows:

Subpart B—Demonstration Grants for Indian Children and Youth Program

■ 3. Section 263.20 is amended by:

■ a. In the section heading, adding the words ''and Youth'' after the word ''Children'';

■ b. Removing the definition of ''Indian institution of higher education'';

■ c. In paragraph (6)(i) of the definition of ''Native Youth community project'', adding the words ''and Youth'' after the word ''Children'';

■ d. Adding a definition of ''Parent'';

■ e. In the definition of ''Professional development activities'', adding the words ''and Youth'' after the word ''Children''; and

■ f. Adding in alphabetical order a definition for ''Tribal College or University (TCU)''.

The additions read as follows:

§ 263.20 What definitions apply to the Demonstration Grants for Indian Children and Youth program?

* * * * *

Parent includes a legal guardian or other person standing in loco parentis (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

Tribal College or University (TCU) means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

■ 4. Section 263.21 is amended by:

■ a. In paragraph (a), removing the number ''7121(c)'' and adding, in its place, the number ''6121(c)'';

■ b. In paragraph (b)(1), adding the words ''school funded by the Bureau of Indian Education,'' after the words ''Indian organization,'' each time they appear, and removing the words ''Indian institution of higher education'' and replacing them with ''TCU'' each time they appear;

■ c. In paragraph (b)(2)(i), adding the words ''school funded by the Bureau of Indian Education,'' after the words ''Indian organization,'' each time they appear, and removing the words ''Indian institution of higher education'' and replacing them with ''TCU''.

■ d. In paragraph (c)(3), removing the number ''7116'' and adding, in its place, ''6116'';

■ e. In paragraph (c)(4), removing the number ''7121(c)'' and adding, in its place, the number ''6121(c)'';

■ f. Revising paragraph (c)(5)(i) and (ii); and

■ g. Adding paragraphs (c)(6) and (7).

The revision and additions read as follows:

§ 263.21 What priority is given to certain projects and applicants?

* * * * *

(c) * * *

(5) * * *

(i) An LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the ESEA; or

(ii) A BIE-funded school that is located in an area designated with locale code of either 41, 42, or 43 as designated by the National Center for Education Statistics.

(6) Non-rural projects that do not meet the priority in paragraph (c)(5) of this section. This priority can only be used in competitions where the priority in paragraph (c)(5) of this section is also used.

(7) Projects to expand educational choice by enabling a Tribe, or the grantee and its Tribal partner, to select a project focus that meets the needs of their students and enabling parents of Indian students, or the student, to choose education services by selecting the specific service and provider desired.

* * * * *

■ 5. Section 263.22 is amended by:

■ a. Revising paragraphs (a)(1) and (3).

■ b. Adding paragraphs (b)(4) and (5).

The revision and addition read as follows:

§ 263.22 What are the application requirements for these grants?

(a) * * *

(1) A description of how Indian Tribes and parents and families of Indian children and youth have been, and will be, involved in developing and implementing the proposed activities;

(2) * * *

(3) Information demonstrating that the proposed project is evidence-based, where applicable, or is based on an existing evidence-based program that has been modified to be culturally appropriate for Indian students;

* * * * *

(b) * * *

(4) A plan for how the applicant will oversee service providers and ensure that students receive high-quality services under the project.

(5) For an applicant that is not a Tribe—

(i) If 50 percent or more of the student body to be served consists of members of one Tribe, the applicant must include that Tribe as a documented partner for the proposed project; or

(ii) If less than 50 percent of the student body to be served consists of members of one Tribe, the applicant must include a local Tribe, local or national Tribal organization, TCU, or BIE-funded school as a documented partner for the proposed project.

■ 6. Revising the authority citation to § 263.23 to read as follows:

(Authority: 25 U.S.C. 5304, 5307)

■ 7. Adding § 263.24 to read as follows:

§ 263.24 How does the Secretary evaluate applications for the Demonstration Grants for Indian Children and Youth grants program?

The Secretary uses the procedures in 34 CFR 75.200 through 75.210 to establish the selection criteria and factors used to evaluate applications submitted in a grant competition for the Demonstration Grants for Indian Children and Youth program. The Secretary may also consider one or more of the criteria and factors in paragraphs (a) and (b) of this section to evaluate applications.

(a) *Quality of project services.* The Secretary considers one or more of the following factors in determining the quality of project services:

(1) The extent to which the project would offer high-quality choices of services, including culturally relevant services, and providers, for parents and students to select.

(2) The extent to which the services to be offered would meet the needs of the local population, as demonstrated by an analysis of community-level data, including direct input from parents and families of Indian children and youth.

(3) The extent to which the services to be offered are evidence-based.

(b) *Quality of the project design.* The Secretary considers one or more of the following factors in determining the quality of the project design:

(1) The extent to which the project is designed to improve student and parent satisfaction with the student's overall education experience, as measured by pre- and post-project data.

(2) The extent to which the applicant proposes a fair and neutral process of selecting service providers that will result in high-quality options from which parents and students can select services.

(3) The quality of the proposed plan to inform parents and students about available service choices under the project, and about the timeline for termination of the project.

(4) The quality of the applicant's plan to oversee service providers and ensure that students receive high-quality services under the project.

(c) *Reasonableness of budget.* The Secretary considers one or more of the following factors in determining the reasonableness of the project budget:

(1) The extent to which the budget reflects the number of students to be served and a per-pupil amount for services, not including funds for project administration, that is reasonable in relation to the project objectives; and

(2) The extent to which the per-pupil costs of specific services and per-pupil funds available are transparent to parents and other stakeholders.

■ 8. Adding § 263.25 to read as follows:

§ 263.25 What are the program requirements when the Secretary uses the priority in § 263.21(c)(7)?

In any year in which the Secretary uses the priority in § 263.21(c)(7) for a competition, each project must—

(a) Include the following, which are chosen by the grantee, or the grantee and its partnering Tribe if the grantee is not a Tribe:

(1) A project focus and specific services that are based on the needs of the local community; and

(2) Service providers;

(b) Include more than one education option from which parents and students may choose, which may include—

(1) Native language, history, or culture courses;

(2) Advanced, remedial, or elective courses, which may be online;

(3) Apprenticeships or training programs that lead to industry certifications;

(4) Concurrent and dual enrollment;

(5) Tuition for private school or home education expenses;

(6) Special education and related services that supplement, and are not part of, the special education and related services, supplementary aids and services, and program modifications or supports for school personnel required to make available a free appropriate public education (FAPE) under Part B of the Individuals with Disabilities Education Act (IDEA) to a child with a disability in conformity with the child's individualized education program (IEP) or the regular or special education and related aids and services required to ensure FAPE under Section 504 of the Rehabilitation Act of 1973 (Section 504);

(7) Books, materials, or education technology, including learning software or hardware that are accessible to all children;

(8) Tutoring;

(9) Summer or afterschool education programs, and student transportation needed for those specific programs. Such programs could include instruction in the arts, music, or sports, to the extent that the applicant can demonstrate that such services are culturally related or are supported by evidence that suggests the services may have a positive effect on relevant education outcomes;

(10) Testing preparation and application fees, including for private school and graduating students;

(11) Supplemental counseling services, not to include psychiatric or medical services; or

(12) Other education-related services that are reasonable and necessary for the project;

(c)(1) Provide additional services that are supplemental to the education program provided by local schools attended by the students to be served;

(2) Ensure that funding is supplemental to existing sources, such as Johnson O'Malley funding; and

(3) Ensure that the availability of funds for supplemental special education and related services (*i.e.,* services that are not part of the special education and related services, supplementary aids and services, and program modifications or supports for school personnel that are required to make FAPE available under Part B of the IDEA to a child with a disability in conformity with the child's IEP or the regular or special education and related aids and services required to make FAPE available under a Section 504 plan, if any) does not affect the right of the child to receive FAPE under Part B of the IDEA or Section 504, and the respective implementing regulations;

(d) Provide a method to enable parents and students to select services. Such a method must—

(1) Ensure that funds will be transferred directly from the grantee to the selected service provider;

(2) Include service providers other than the applicant, although the applicant may be one of the service providers; and

(3) Be supplemental to any existing service selection method;

(e) Include a parent involvement and feedback process that:

(1) Describes a way for parents to request services or providers that are not currently offered and provide input on services provided through the project, and describes how the grantee will provide parents with written responses within thirty days; and

(2) May include a parent liaison to support the grantee in outreach to parents and assist parents and the grantee with the process by which a parent can request services or providers not already specified by the grantee.

(f) Include a written agreement between the grantee and each service provider under the project. The agreements must include—

(1) A nondiscrimination clause that—

(i) Requires the provider to abide by all applicable non-discrimination laws with regard to students to be served, *e.g.,* on the basis of race, color, national origin, religion, sex, or disability; and

(ii) Prohibits the provider from discriminating among students who are eligible for services under this program, *i.e.,* that meet the definition of ''Indian'' in section 6151 of the ESEA, on the basis of affiliation with a particular Tribe;

(2) A description of how the grantee will oversee the service provider and hold the provider accountable for—

(i) The terms of the written agreement; and

(ii) The use of funds, including compliance with generally accepted accounting procedures and Federal cost principles;

(3) A description of how students' progress will be measured; and

(4) A provision for the termination of the agreement if the provider is unable to meet the terms of the agreement;

(g) Include a fair and documented process to choose students to be served, such as a lottery or other transparent criteria (*e.g.,* based on particular types of need), in the event that the number of requests from parents of eligible students for services under the project exceeds the available capacity, with regard to the number or intensity of services offered; and

(h) Ensure that—

(1) At least 80 percent of grant funds are used for direct services to eligible students, provided that, if a grantee requests and receives approval for the first year of its grant to be a planning year, the 80 percent requirement does not apply to that planning year; and

(2) Not more than 15 percent of grant funds are used on the service selection method described in paragraph (d) of this section or the parent involvement and feedback process described in paragraph (e) of this section, except in an authorized planning year.

[FR Doc. 2020–06224 Filed 3–30–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2020–OPE–0031]

Proposed Priorities, Requirement, and Definitions—Fund for the Improvement of Postsecondary Education—Open Textbooks Pilot Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Proposed priorities, requirement, and definitions.

SUMMARY: The Assistant Secretary for Postsecondary Education proposes priorities, requirement, and definitions for the Open Textbooks Pilot program conducted under the Fund for the Improvement of Postsecondary Education (FIPSE), Catalog of Federal Domestic Assistance (CFDA) number 84.116T. The Assistant Secretary may use one or more of these priorities, requirement, and definitions for competitions in fiscal year (FY) 2020 and later years. We intend this action to further develop and identify programs and practices that improve instruction and student learning outcomes, as well as increase access, affordability, and completion rates of students seeking postsecondary education degrees or other recognized credentials as a result of the development, enhancement, and use of open textbooks (as defined in this notice).

DATES: We must receive your comments on or before April 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 ''Help.''

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priorities, requirement, and definitions, address them to Stacey Slijepcevic, U.S. Department of Education, 400 Maryland Avenue SW, Room 268–34, Washington, DC 20202.

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

FOR FURTHER INFORMATION CONTACT: Stacey Slijepcevic, U.S. Department of Education, 400 Maryland Avenue SW, Room 268–34, Washington, DC 20202. Telephone: (202) 453–6150. Email: *stacey.slijepcevic@ed.gov.*

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

SUPPLEMENTARY INFORMATION: *Invitation to Comment:* We invite you to submit comments regarding the proposed priorities, requirement, and definitions. To ensure that your comments have maximum effect in developing the final priorities, requirement, and definitions, we urge you to identify clearly the specific proposed priority, requirement, or definition your comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13371 and their overall requirement of reducing regulatory burden that might result from the proposed priorities, requirement, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirement, and definitions by accessing *Regulations.gov*. You may also inspect the comments in person in Room 3E335, 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. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Purpose of Program: The Open Textbooks Pilot program supports projects at institutions of higher education (IHEs) that create new open textbooks or expand the use of open textbooks in order to achieve savings for students while maintaining or improving instruction and student learning outcomes. Applicants are encouraged to develop projects that demonstrate the greatest potential to achieve the highest level of savings for students through sustainable, expanded use of open textbooks in high-enrollment courses (as defined in this notice) or in programs that prepare individuals for in-demand fields.

Program Authority: 20 U.S.C. 1138–1138d.

Proposed Priorities

This notice contains four proposed priorities. We may use one or more of these priorities in any year in which this program is in effect.

Background: The growth in college textbook costs is an important contributing factor to the overall increase in the cost of attending college. The cost of college textbooks increased 88 percent between 2006 and 2016.[1] In the 2017–18 academic year, the average college student budget for books and supplies was $1,265 for students attending four-year institutions and $1,471 for students attending two-year institutions.[2] Increasing textbook costs creates financial barriers to college access and completion, particularly for low-income students who have a higher propensity to forego purchasing textbooks.

The Department seeks to promote student success, especially for non-traditional students, adult learners, and students from traditionally underserved populations, by supporting the development and expanded use of open textbooks. The proposed priorities, requirement, and definitions are based largely on those used in the notice inviting applications published in the **Federal Register** on July 30, 2018 (83 FR 36577), which introduced the Open Textbooks Pilot program. This notice is intended to establish a programmatic structure to further support the widespread adoption and use of existing open textbooks and the development of new open textbooks for courses in one or more high-enrollment programs.

In addition to seeking public comment on the proposed priorities, requirement, and definitions, the Department seeks feedback on the following four topics to help guide future Open Textbooks Pilot program grant competitions:

1. *Award Size:* In the FY 2020 notice inviting applications for the Open Textbook Pilot program, the Department will establish a maximum award and provide estimates regarding the range of award sizes, the total number of awards, and the average award. In establishing a maximum award, the Department seeks to balance the desire to make multiple awards with the need to provide adequate support to ensure that only the highest quality materials will be developed, will be adopted and implemented by a number of institutions, and will be updated beyond the grant period. The Department seeks feedback from the public on the appropriate amounts for each of these elements, assuming a 48-month project period and approximately $6 million available for new awards.

2. *Matching Contributions:* Many Department programs and competitions include matching requirements to support key policy goals, including leveraging Federal dollars to maximize program impact or encouraging the institutionalization or sustainability of a program or project. The Department seeks feedback from the public on

[1] Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily,* College tuition and fees increase 63 percent since January 2006 (*www.bls.gov/opub/ted/2016/college-tuition-and-fees-increase-63-percent-since-january-2006.htm*).

[2] National Center for Education Statistics, Digest of Education Statistics, (*https://nces.ed.gov/programs/digest/d18/tables/dt18_330.40.asp*).

whether a matching requirement would be appropriate and, if so, the appropriate threshold to establish for matching contributions.

3. *High-enrollment:* In the FY 2018 competition, the Department defined ''high-enrollment courses'' as courses required for an associate or bachelor's degree at the IHE and that have a student enrollment above the average enrollment of courses at that institution or have higher than average enrollments nationally as compared to other academic or career and technical education courses. Likewise, the definition for a ''high-enrollment program'' was a program with a student enrollment above the average enrollment for programs at that institution or that has higher than average enrollments nationally as compared to other academic or career and technical education programs. To establish a direction for this program that ensures funds are reaching courses and programs with the highest enrollment, the Department seeks feedback on the proposed revised definition, which broadens the definition of ''high-enrollment courses'' to include courses in a recognized postsecondary credentialing pathway, as well as increases the benchmark for high-enrollment courses and programs to course and program enrollments within, at least, the top third of all courses and programs offered within the institution.

4. *Open Textbook:* The learning resources marketplace has evolved beyond single textbooks to include supporting digital resources such as homework systems, assessment modules, and tutoring and support applications that are ubiquitous in classrooms and institutions. To more fully meet the needs of students and professional educators in higher education, the Department proposes a definition of ''open textbook'' that is broader than what was used in the FY 2018 competition. The Department seeks feedback on the revised definition included in this notice.

Proposed Priorities

Proposed Priority 1—Improving Collaboration and Dissemination

Background: Institutions with textbook affordability programs have reported successful implementation of open textbooks by faculty and instructional support through collaboration with librarians, instructional designers, government, and other partners.[3] [4] [5]

However, there are a variety of challenges in developing and continuously updating open textbooks as well as in facilitating their widespread adoption and use. These include faculty awareness of open textbooks, real or perceived concerns about textbook quality, faculty self-interest in commercial textbooks they wrote, and availability of ancillary learning resources. National surveys [6] have shown that while approximately 46 percent of faculty are aware of open textbooks in their area of study, only 20 percent of faculty are aware of a specific open textbook initiative at their university. To address these challenges, this proposed priority would emphasize partnerships within and among institutions and organizations that promote the development, implementation, and use of existing openly licensed resources and provide professional development opportunities for instructors and faculty as they create or adapt open textbooks.

Proposed Priority: To meet this priority, an eligible applicant must propose to lead and carry out projects that involve a consortia of institutions, instructors, and subject matter experts, including no less than three IHEs, along with relevant employers, workforce stakeholders (as defined in this notice), and/or trade or professional associations (as defined in this notice). Applicants must explain how the members of the consortium will work together to develop and implement open textbooks that: (a) Reduce the cost of college for large numbers of students through a variety of cost saving measures; and (b) contain instructional content and ancillary instructional materials that align student learning objectives with the skills or knowledge required by large numbers of students (at a given institution or nationally), or in the case of a career and technical postsecondary program, meet industry standards in in-demand industry sectors or in-demand occupations (as defined in this notice).

Proposed Priority 2—Addressing Gaps in the Open Textbook Marketplace and Bringing Solutions to Scale

To meet this priority, an applicant must identify the gaps in the open textbook marketplace that it seeks to address and propose how to close such gaps. An applicant must propose a comprehensive plan to: (a) Identify and assess existing open educational resources in the proposed subject area before creating new ones, such as by identifying any existing open textbooks that could potentially be used as models for the design of the project or ancillary learning resources that would support the development of courses that use open textbooks; (b) focus on the creation and expansion of education and training materials that can be scaled, within and beyond the participating consortium members, to reach a broad range of students participating in high-enrollment courses or preparing for in-demand industry sectors or in-demand occupations; (c) create and disseminate protocols to review any open textbooks created or adapted through the project for accuracy, rigor, and accessibility for students with disabilities; (d) disseminate information about the results of the project to other IHEs, including promoting the adoption of any open textbooks created or adapted through the project, or adopting open standards of interoperability for any digital assets created; (e) include professional development to build capacity of faculty, instructors, and other staff to adapt and use open textbooks; and (f) describe the courses for which open textbooks and ancillary materials are being developed.

Proposed Priority 3—Promoting Student Success

To meet this priority, an applicant must propose to build upon existing open textbook materials and/or develop new open textbooks for high-enrollment courses or high-enrollment programs in order to achieve the highest level of savings for students.

Additionally, this priority requires the applicant to include plans for: (a) Promoting and tracking the use of open textbooks in postsecondary courses across participating members of the consortium, including an estimate of the projected direct cost savings for students which will be reported during the annual performance review; (b) monitoring the impact of open textbooks on instruction, learning outcomes, course outcomes, and educational costs; (c) investigating and disseminating evidence-based practices associated with using open textbooks that improve

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[3] Griffiths, R., Mislevy, J., Wang, S., Ball, A., Shear, L., & Desrochers, D. (2020), OER at Scale: The Academic and Economic Outcomes of Achieving the Dream's OER Degree Initiative. Menlo Park, CA: SRI International.

[4] Chae, B., & Jenkins, M. (2015). A qualitative investigation of faculty Open Educational Resource usage in the Washington Community and Technical College System: Models for support and implementation. *Washington State Board for Community and Technical Colleges whitepaper.*

[5] Raneri, A., & Young, L. (2016). Leading the Maricopa millions OER project. *Community College Journal of Research and Practice,* 40(7), 58–588

[6] Seaman, J.E., Seaman, J., & Babson Survey Research Group. (2017). *Opening the Textbook: Educational Resources in U.S. Higher Education, 2017.* Babson Survey Research Group. Retrieved from *http://search.ebscohost.com/login.aspx?direct=true&db=eric&AN=ED582411&site=ehost-live.*

student outcomes; and (d) updating the open textbooks beyond the funded period.

Proposed Priority 4—Using Technology-Based Strategies for Personalized Learning and Continuous Improvement

To meet this priority, an applicant must propose a project that focuses on improving instruction and student learning outcomes by integrating personalized learning strategies, such as artificial intelligence and adaptive learning, and providing support to faculty, instructors, and other staff who are delivering courses using these techniques. The project must enable students to tailor and monitor their own learning and/or allow instructors to monitor the individual performance of each student in the classes or courses for which the applicant proposes to develop open textbooks. In addition, online and technology-enabled content and courses developed under this project must incorporate the principles of universal design in order to ensure that they are readily accessible by all students. The openly licensed resources that are developed should support traditional, text-based materials, including through such tools as adaptive learning modules, digital simulations, and tools to assist student engagement.

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

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

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

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

Proposed Requirement

Background: Consistent with the explanatory statement accompanying the FY 2020 appropriations bill, we propose to expand the entities eligible to apply to lead the activities of the consortium to include State higher education agencies.

Proposed Requirement: The Assistant Secretary for Postsecondary Education proposes the following requirement for this program. We may apply this requirement in any year in which this program is in effect.

Eligible Applicants: Eligible applicants are IHEs as defined in section 101 of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1001), or State higher education agencies that—

(a) Lead the activities of a consortium that is comprised of at least—

(1) Three IHEs, as defined in section 101 of the HEA;

(2) An educational technology or electronic curriculum design expert (which may include such experts that are employed by one or more of the consortium institutions); and

(3) An advisory group of at least five employers, workforce organizations, or sector partners (as defined in this notice); and

(b) Have demonstrated experience in the development and implementation of open educational resources.

Proposed Definitions

Background: Multiple terms associated with this program have not been defined. We discuss our reasoning for the proposed definitions of ''high-enrollment courses,'' ''high-enrollment program,'' and ''open textbook'' in the *Background* section under PROPOSED PRIORITIES. For the other proposed definitions, we are drawing on language and defined terms in the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128) to ensure consistency across programs. In addition to the proposed definitions, we also use the following defined term in the proposed priorities, requirement, and definitions: State higher education agency as defined in section 103 of the HEA (20 U.S.C. 1003).

Proposed Definitions: The Assistant Secretary for Postsecondary Education proposes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

High-enrollment courses means courses that are required for a credential conferred by an eligible IHE that either have total student enrollments within the top third of courses: (a) At the lead institution, if applicable, or at one or more of the consortia partner institutions; (b) in the State; or (c) nationally as compared to other academic or career and technical education courses.

High-enrollment program means a program that yields a postsecondary credential that either has total student enrollments within the top third of programs: (a) At the lead institution, if applicable, or at one or more of the consortia partner institutions; (b) in the State; or (c) nationally as compared to other academic or career and technical education courses.

In-demand industry sector means an industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting businesses, or the growth of other industry sectors.

In-demand occupation means an occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

Open textbook means a textbook that is licensed under a worldwide, non-exclusive, royalty-free, perpetual, and irrevocable license to the public to exercise any of the rights under copyright conditioned only on the requirement that attribution be given as directed by the copyright owner. An open textbook may also include a variety of open educational resources or materials used by instructors in the development of a course and those learning activities necessary for successful completion of a course by students. These include any learning exercises, technology-enabled experiences (*e.g.,* simulations), and adaptive support and assessment tools.

Sector partner means a member of a workforce collaborative, convened by or acting in partnership with a State board or local board, that organizes key stakeholders interconnected by labor markets, technologies, and worker skill needs into a working group that focuses on shared goals and resource needs.

Trade or professional association means a membership organization that inspects employers or practitioners, or leads credentialing programs, in a specific industry or sector.

Workforce stakeholder means an individual or organization with an interest in the employability of others either for self-interest or the interest of other employers.

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

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

Executive Orders 12866, 13563, and 13771 Regulatory Impact Analysis

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

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

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

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

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

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

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

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

(1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify);

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

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

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

(5) Identify and assess available alternatives to direct regulation, including economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

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

We are issuing these proposed priorities, requirement, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

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

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Paperwork Reduction Act of 1995

The proposed priorities, requirement, and definitions contain information collection requirements that are approved by OMB under OMB control number 1894–0006; the proposed priorities, requirement, and definitions do not affect the currently approved data collection.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities, requirement, and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

The small entities that this proposed regulatory action would affect are public or private nonprofit agencies and organizations, including Indian Tribes and institutions of higher education that may apply. We believe that the costs imposed on an applicant by the proposed priorities, requirement, and definitions would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priorities, requirement, and definitions would outweigh any costs incurred by the applicant.

Participation in the Open Textbooks Pilot program is voluntary. For this reason, the proposed priorities, requirement, and definitions would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for the Open Textbooks Pilot program funds, an eligible entity would evaluate the requirement of preparing an application and any associated costs, and weigh them against the benefits likely to be achieved by receiving a program grant. An eligible entity would probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that the proposed priorities, requirement, and definitions would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

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

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

Assessment of Educational Impact

In accordance with section 411 of GEPA, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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

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

Robert L. King,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2020–06350 Filed 3–30–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0812; FRL–10006–85–Region 9]

Air Quality State Implementation Plan Approval; Nevada; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the remaining portion of a state implementation plan (SIP) revision submitted by the State of Nevada. This revision addresses the interstate transport requirements of the Clean Air Act (CAA) with respect to the 2010 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS). In this action, the EPA is proposing to determine that Nevada will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before April 30, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2014–0812 at *http://www.regulations.gov,* or via email to *kelly.thomasp@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov*. For either manner of submission, 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 the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tom Kelly, EPA Region IX, (415) 972–3856, *kelly.thomasp@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," or "our" refer to the EPA.

Table of Contents

IV. Statutory and Executive Order Reviews

I. Background

On June 22, 2010, the EPA promulgated a revised primary NAAQS for SO_2 at a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations.[1] Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or a shorter period as the EPA may prescribe. These SIPs, which the EPA has historically referred to as ''infrastructure SIPs,'' are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS, and the requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibility under the CAA. Section 110(a) of the CAA imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of individual state submissions may vary depending upon the facts and circumstances. The content of the revisions proposed in SIP submissions may also vary depending upon what provisions are already contained in the state's approved SIP.

On June 3, 2013, the State of Nevada submitted a revision to its SIP addressing the requirements of section 110(a)(2) of the CAA with respect to the 2010 SO_2 NAAQS (''2013 Nevada SIP revision''). On November 3, 2015, the EPA partially approved and partially disapproved portions of the 2013 Nevada SIP revision for the 2010 SO_2 NAAQS.[2] However, at that time, the EPA did not take action on the section 110(a)(2)(D)(i)(I), interstate transport portion of the 2013 Nevada SIP revision.[3] The EPA is now proposing to act on that portion of the 2013 Nevada SIP revision for the 2010 SO_2 NAAQS.

II. Section 110(a)(2)(D)(i)(I)—Interstate Transport

A. General Requirements and Historical Approaches for Criteria Pollutants

Section 110(a)(2)(D)(i)(I) requires states to include in their SIPs provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS). The EPA commonly refers to SIP revisions addressing the requirements of section 110(a)(2)(D)(i)(I) as ''good neighbor SIPs'' or ''interstate transport SIPs.''

The EPA's most recent infrastructure SIP guidance, the September 13, 2013 ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' did not explicitly include criteria for how the Agency would evaluate infrastructure SIP submissions intended to address section 110(a)(2)(D)(i)(I).[4] With respect to certain pollutants, such as ozone and particulate matter, the EPA has addressed interstate transport in eastern states in the context of regional rulemaking actions that quantify state emissions reduction obligations.[5] In other actions, such as the EPA actions on western interstate transport SIPs addressing ozone and particulate matter, the EPA has considered a variety of factors on a case-by-case basis to make a weight of evidence determination as to whether emissions from one state interfere with the attainment and maintenance of the NAAQS in another state. In such actions, the EPA has considered available information such as current air quality, emissions data and trends, meteorology, and topography.[6]

1. The EPA's Approach for Addressing the Interstate Transport Requirements of the 2010 Primary SO_2 NAAQS in Nevada

As previously noted, section 110(a)(2)(D)(i)(I) requires an evaluation of any source or other type of emissions activity in one state and how emissions from these source categories may impact air quality in other states. The EPA believes that a reasonable starting point for determining which sources and emissions activities in Nevada are likely to impact downwind air quality with respect to the 2010 SO_2 NAAQS is to use information in the National Emissions Inventory (NEI).[7] The NEI is a comprehensive and detailed estimate of air emissions of criteria pollutants, criteria pollutant precursors, and hazardous air pollutants from air emissions sources, that is updated every three years using information provided by the states. At the time of this proposed rulemaking, the most recently available complete dataset is the 2014 NEI. The analysis in this proposed rulemaking also relies on facility-reported emissions data, the most recent of which is for 2017.[8] In addition, our analysis uses trends data, which the EPA prepares annually.[9] Trends data include facility reported emissions data and data extrapolated by the EPA from the most recent NEI year.

Although SO_2 is emitted from similar point and nonpoint sources, as is

[1] 75 FR 35520.

[2] The EPA's final rule (80 FR 67652) addressed all elements of the three separate SIP submittals for 2008 ozone, 2010 nitrogen oxides, and 2010 SO_2, with the exception of interstate transport requirements (prongs 1 and 2) for 2008 ozone, addressed in a subsequent rulemaking (82 FR 9164, February 3, 2017), and prongs 1 and 2 of the interstate transport requirements for 2010 SO_2 addressed in this proposal.

[3] In addition to section 110(a)(2)(D)(i)(I) provisions for SO_2, the EPA did not act on the section 110(a)(2)(D)(i)(I) provisions of Nevada's SIP submittal for the 2008 ozone NAAQS that was part of the same rulemaking. The EPA approved the section 110(a)(2)(D)(i)(I) portion of Nevada's submittal for the 2008 ozone NAAQS in a subsequent rulemaking, 82 FR 9164 (February 3, 2017).

[4] At the time the September 13, 2013 guidance was issued, the EPA was litigating challenges raised with respect to its Cross State Air Pollution Rule (''CSAPR''), 76 FR 48208 (Aug. 8, 2011), designed to address the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements with respect to the 1997 ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS. CSAPR was vacated and remanded by the D.C. Circuit in 2012 pursuant to *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7. The EPA subsequently sought review of the D.C. Circuit's decision by the Supreme Court, which was granted in June 2013. As the EPA was in the process of litigating the interpretation of section 110(a)(2)(D)(i)(I) at the time the infrastructure SIP guidance was issued, the EPA did not issue guidance specific to that provision. The Supreme Court subsequently vacated the D.C. Circuit's decision and remanded the case to that court for further review. 134 S.Ct. 1584 (2014). On July 28, 2015, the D.C. Circuit issued a decision upholding CSAPR, but remanding certain elements for reconsideration. 795 F.3d 118.

[5] See, *e.g.,* NO_X SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); CSAPR, 76 FR 48208 (August 8, 2011); CSAPR Update, 81 FR 74504 (October 26, 2016).

[6] See, *e.g.,* Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Significant Contribution to Nonattainment and Interference With Maintenance Requirements, Proposed Rule, 76 FR 14616, 14616–14626 (March 17, 2011); Final Rule, 76 FR 34872 (June 15, 2011); Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution for the 2006 24-Hour $PM_{2.5}$ NAAQS, Proposed Rule, 80 FR 27121, 27124–27125 (May 12, 2015); Final Rule, 80 FR 47862 (August 10, 2015).

[7] For additional information, see: *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory.*

[8] Data downloaded on October 9, 2019, from: *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data,* dataset: 2017NEI_Aug2019_PT, and contained in the docket for this notice.

[9] State Annual Emission Trend data can be downloaded from *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data.* Trends data does not include event emissions, such as forest fires.

directly emitted fine particulate matter ($PM_{2.5}$) [10] and the precursors to both ozone and $PM_{2.5}$, interstate transport of SO_2 is unlike the transport of $PM_{2.5}$ or ozone because SO_2 emissions sources usually do not have long range SO_2 impacts. The transport of SO_2 relative to the 1-hour NAAQS is more analogous to the transport of lead (Pb) relative to the Pb NAAQS in that emissions of SO_2 typically result in 1-hour pollutant impacts of possible concern only near the emissions source. However, ambient 1-hour concentrations of SO_2 do not decrease as quickly with distance from the source as do 3-month average concentrations of Pb, because SO_2 gas is not removed by deposition as rapidly as are Pb particles and because SO_2 typically has a higher emissions release height than Pb. Emitted SO_2 has wider ranging impacts than emitted Pb, but it does not have such wide-ranging impacts that its treatment in a manner similar to ozone or $PM_{2.5}$ would be appropriate. Accordingly, while the approaches that the EPA has adopted for ozone or $PM_{2.5}$ transport would be too regionally focused for SO_2, the approach for Pb transport would be too tightly circumscribed to the source. SO_2 transport is therefore a unique case and requires a different approach.

In this proposed rulemaking, as in prior SO_2 transport analyses, we focus on a 50 kilometer (km) wide zone because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source that drop off with distance. Given the properties of SO_2, the EPA selected a spatial scale with dimensions from four to 50 km from point sources—the ''urban scale''—to assess trends in area-wide air quality that might impact downwind states.[11] As discussed further in section III.B, the EPA selected the urban scale as appropriate for assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at SO_2 point sources. The EPA's selection of this transport distance for SO_2 is based upon 40 CFR 58, Appendix D, Section 4.4.4(4), ''Urban scale'', which states that measurements in this scale would be used to estimate SO_2 concentrations over large portions of an urban area with dimensions from four to 50 km. The American Meteorological Society/Environmental Protection Agency Regulatory Model is the EPA's preferred modeling platform for regulatory purposes for near-field dispersion of emissions for distances up to 50 km. (Appendix W of 40 CFR part 51).[12] Thus, the EPA has applied the 50-km zone as a reasonable distance to evaluate emissions source impacts into neighboring states and to assess air quality monitors within 50 km of the State's border.

Current implementation strategies for the 2010 primary SO_2 NAAQS include the flexibility to characterize air quality for stationary sources via either data collected at ambient air quality monitors sited to capture the points of maximum concentration, or air dispersion modeling.[13] The EPA's assessment of SO_2 emissions from fuel combustion categories in Nevada and their potential on neighboring states is informed by all available data at the time of this rulemaking and include: SO_2 ambient air quality; SO_2 emissions and emissions trends; SIP-approved regulations that directly address SO_2; and other SIP-approved regulations, which may yield reductions of SO_2. This notice describes the EPA's weight of evidence evaluation of the 2013 Nevada SIP revision to satisfy the requirements of CAA section 110(a)(2)(D)(i)(I).[14]

B. Nevada's SIP Submittal

1. Administrative Requirements

On June 3, 2013, the Nevada Division of Environmental Protection (NDEP) submitted to the EPA the 2013 Nevada SIP revision.[15] The submittal includes the following:

- The Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2010 Sulfur Dioxide Primary NAAQS, and appendices, June 3, 2013;
- State Implementation Plan Revision to Meet the Sulfur Dioxide Infrastructure SIP Requirements of the Clean Air Act § 110(a)(2), and attachments Clark County, Nevada, May 29, 2013;
- The Washoe County Portion of the Nevada State Implementation Plan to Meet the Sulfur Dioxide Infrastructure SIP Requirements of Clean Air Act § 110(a)(2), and attachments, March 28, 2013

The submittal was deemed complete by operation of law on December 3, 2013.

The Washoe and the NDEP portions of the submittal state that they are not required to make submittals addressing the requirements of CAA section 110(a)(2)(D)(i)(I) and cite to a November 19, 2012 memo from EPA Administrator Gina McCarthy, which outlined the EPA's intention to abide by a 2012 D.C. Circuit decision.[16]

Despite stating in the NDEP portion of the submittal that it was not obligated to address the requirements of CAA section 110(a)(2)(D)(i)(I), the NDEP included Appendix C ''Interstate Transport Analysis for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard'' (''Appendix C'' or ''transport analysis'') to address the aforementioned CAA requirements.

2. The NDEP's Transport Analysis

As the NDEP's portion of the submittal explains, the Clark County Department of Air Quality (Clark County) and Washoe County Board of Health (Washoe County) regulate air pollution within their respective counties, with the exception of fossil-fuel-fired steam generators. The NDEP regulates air pollution in all other counties of the State as well as fossil-fuel-fired steam generators throughout the State, including Clark County and Washoe County.

The following summarizes the NDEP's rationale for concluding that transport of SO_2 from Nevada would not significantly contribute to nonattainment, or interfere with

[10] Includes particles with an aerodynamic diameter of less than or equal to 2.5 micrometers.

[11] For the definition of spatial scales for SO_2, see 40 CFR part 58, Appendix D, section 4.4 (''Sulfur Dioxide (SO_2) Design Criteria''). For further discussion on how the EPA applies these definitions with respect to interstate transport of SO_2, see the EPA's notice of proposed rulemaking on Connecticut's SO_2 transport SIP. 82 FR 21351, 21352, 21354 (May 8, 2017).

[12] The EPA provided non-binding technical assistance document (*i.e.,* ''SO_2 NAAQS Designations Modeling Technical Assistance Document'') to assist states and other parties in their efforts to characterize air quality through air dispersion modeling for sources that emit SO_2. This draft document was first released in spring 2013. Revised drafts were released in February and August of 2016 (see *https://www.epa.gov/sites/production/files/2016-06/documents/so2modelingtad.pdf*).

[13] Data Requirements Rule for the 2010 1-Hour Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard (80 FR 51052, August 21, 2015).

[14] The EPA notes that the evaluation of other states' satisfaction of section 110(a)(2)(D)(i)(I) for the 2010 SO_2 NAAQS can be informed by similar factors found in this proposed rulemaking but may not be identical to the approach taken in this or any future rulemaking for Nevada, depending on available information and state-specific circumstances.

[15] Letter dated June 3, 2013, from Colleen Cripps, Administrator, NDEP, to Jared Blumenfeld, Regional Administrator, EPA Region IX.

[16] *EME Homer City Generation, L.P.* v. *E.P.A.* 696 F.3d 7. The *EME Homer City Generation, L.P.* v. *E.P.A.* decision addressed CSAPR promulgated by the EPA to address the interstate transport requirements under section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. Among other things, the D.C. Circuit held that states did not have an obligation to submit SIPs addressing section 110(a)(2)(D)(i)(I) interstate transport requirements as to any NAAQS until the EPA first quantified each state's emissions reduction obligation. On March 25, 2016, the Supreme Court reversed the D.C. Circuit opinion, vacating the *EME Homer City Generation, L.P.* v. *E.P.A.* decision.

maintenance, of the 2010 SO_2 NAAQS in other states.[17]

a. Summary of Nevada's transport analysis regarding nonattainment receptors in contiguous states: Arizona and Utah.

The NDEP's transport analysis cites Clean Air Status and Trends Network (CASTNET) monitoring data in Nevada, Utah, Montana, Colorado, and Arizona. CASTNET data measure air quality in areas where urban influences are minimal, and, thus, are representative of regional background levels of air pollution.[18] According to the NDEP, average weekly and seasonal SO_2 concentrations from six national parks and one national monument in Nevada, Utah, Montana, Colorado, and Arizona were below 2 ppb from 2007 to 2012, ''indicating that the regional SO_2 background concentrations are relatively low, which in turn implies that the bulk of the SO_2 in the urban receptor areas is locally generated and not a regional or transport phenomenon.''

The Nevada transport analysis further explains that Arizona's only nonattainment receptors are the Hayden and Miami SO_2 nonattainment planning areas, located in Gila County and Pinal County, respectively. Total SO_2 emissions from Gila and Pinal counties were 29,470 tons from the 2008 NEI. The NDEP notes that Nevada's nearest SO_2 source, the recently closed Reid Gardner Generating Station,[19] is 305 miles (490 km) from the Miami nonattainment area and 330 miles (530 km) from the Hayden nonattainment area and emitted only 941 tons of SO_2 in 2008, which, for illustrative purposes, was about three percent of the SO_2 emissions originating from the Miami and Hayden copper smelters.[20] Additionally, the NDEP states that meteorological data show the prevailing wind direction in the southern part of the State is from the south-southwest blowing mainly north-northeast (indicating that winds in Nevada are generally not blowing south-southeast from Nevada toward Hayden and Miami in Arizona).[21]

For Utah, the NDEP states that Salt Lake and Tooele counties are classified as nonattainment for the 24-hour and annual 1971 SO_2 NAAQS, but that the counties have not violated those NAAQS since 1981.[22] The Nevada transport analysis concludes that no areas in Utah are likely to exceed the 2010 NAAQS based on monitoring data indicating that elevated SO_2 levels in Salt Lake and Tooele counties ceased decades ago, and CASTNET data demonstrating low levels of regional background SO_2.

b. Summary of Nevada's transport analysis regarding attainment areas in one contiguous western state: Arizona.

Nevada's transport analysis identifies four maintenance areas for the 1971 SO_2 NAAQS in Arizona: The Ajo, Douglas, Morenci, and San Manuel SO_2 planning areas. In its analysis, Nevada summarizes the approved maintenance plans for the areas and states that copper smelters were historically the primary source of SO_2 emissions. The transport analysis states that only one smelter, located in the San Manuel SO_2 maintenance area, remains operational and that there have been no recorded monitoring violations of the SO_2 NAAQS in any of these areas since the mid-1980s.

c. Summary of Nevada's transport analysis regarding nonattainment and maintenance receptor areas in non-contiguous states: Missouri, Montana, and New Mexico.

Nevada's transport analysis also examined transport to nonattainment receptors in Missouri and Montana and determined that SO_2 emissions from Nevada do not contribute to nonattainment in those areas based on a comparison of the emissions inventories in those states and Nevada, wind patterns, and the distance between those states and Nevada.

In addition, the Nevada transport analysis evaluated maintenance receptors in New Mexico and determined that Nevada does not interfere with maintenance in that state based on comparison of the emissions inventories in New Mexico and Nevada, overall regional background levels of SO_2, and the distance between New Mexico and Nevada.

C. The EPA's Evaluation of Prong 1—Significant Contribution to Nonattainment

Prong 1 of the good neighbor provision requires state plans to prohibit emissions that will significantly contribute to nonattainment of a NAAQS in another state. In order to evaluate whether Nevada met prong 1 for the 2010 SO_2 NAAQS, the EPA evaluated the 2013 Nevada SIP revision with respect to the following two factors: (1) SO_2 ambient air quality in Nevada and neighboring states; and (2) SO_2 emissions sources in Nevada and neighboring states. Based on the detailed discussion of these factors below, the EPA proposes to find that Nevada's SIP meets the interstate transport requirements of CAA Section 110(a)(2)(D)(i)(I), prong 1, for the 2010 SO_2 NAAQS.

1. SO_2 Ambient Air Quality in Nevada and Neighboring States

First, the EPA reviewed ambient air quality data in Nevada and neighboring states to see whether there were any monitoring sites with elevated SO_2 concentrations that might warrant further investigation with respect to interstate transport of SO_2 from emissions sources near any given monitor. As shown in Table 1, there are no violating design values[23] between 2014 and 2018 in Nevada or neighboring states apart from monitors located in the Hayden and Miami nonattainment areas in Arizona.[24]

[17] See C–1 to C–9 (Appendix C) of the NDEP portion of the 2013 Nevada SIP revision.

[18] The NDEP reviewed CASTNET data at six national parks and one national monument in: Nevada (Great Basin National Park), Utah (Canyonlands National Park), Montana (Glacier National Park), Colorado (Mesa Verde National Park), and Arizona (Grand Canyon National Park, Petrified Forest National Park, and Chiricahua National Monument).

[19] As discussed in the EPA's rescission of regional haze federal implementation plan for the Reid Gardner Generating Station, three of the Reid Gardner Generating Station's coal-fired boilers ceased operation in 2014 and the fourth ceased operation in 2017. See 83 FR 24952, May 31, 2018.

[20] This quantity was based on the 2008 NEI.

[21] Discussed at C–2 and documented in Figure C.1, Las Vegas, Nevada, Wind Rose Plot, 2003–2011, of the 2013 SIP submittal.

[22] The entire state of Utah is attainment/unclassifiable for the 2010 SO_2 NAAQS, see *https://www.ecfr.gov/cgi-bin/text-idx?SID=dab140f1447715b3662a38473ba7df7d&mc=true&node=se40.20.81_1345&rgn=div8* (last visited on May 1, 2019).

[23] The 2010 l-hour SO_2 NAAQS is met at an ambient air quality monitoring site when the three-year average of the annual (99th percentile) of the daily maximum l-hour average concentrations is less than or equal to 75 ppb. This metric is referred to as a ''design value'' (in this document referred to as the ''SO_2 l-hour design value''). The EPA's data handling conventions and computations necessary for determining compliance with the 2010 1-hour SO_2 NAAQS are provided in 40 CFR part 50, appendix T.

[24] Data for Table 1 is contained in the docket for this notice. See SO_2 monitor report 2018.pdf, SO_2 monitor report 2017.pdf, and SO_2 monitor report 2016.pdf.

TABLE 1—SO_2 DESIGN VALUES FOR NEVADA AND NEIGHBORING STATES

[ppb]

Monitoring site	State	Area	Distance to Nevada border (km)	2014–2016	2015–2017	2016–2018
32–003–0540	NV	Las Vegas	32 km to AZ and 62 km to CA.	7	6	6
32–031–0016	NV	Reno	17 km to CA	5	5	4
04–007–1001	AZ	Hayden NAA[a]	419	280	295	282
04–007–0009	AZ	Miami NAA	391	146	NA[b]	NA
04–007–0011	AZ	Miami NAA	391	200	221	175
04–007–0012	AZ	Miami NAA	389	194	159	127
04–012–8000	AZ	Wenden	130	3	NA	NA
04–013–3002	AZ	Phoenix	193	7	7	7
04–013–9812	AZ	Phoenix	290	8	9	8
04–013–9997	AZ	Phoenix	287	5	6	6
04–013–1028	AZ	Tucson	452	4	3	2
06–013–0002	CA	Concord	212	8	7	8
06–013–1002	CA	Bethel Island	181	4	4	3
06–019–0011	CA	Fresno	171	6	6	6
06–067–0006	CA	Arden-Arcade	126	7	8	2
06–071–0306	CA	Victorville	210	18	3	3
06–071–1234	CA	Trona	110	6	13	6
(26–31 Other Monitoring Locations).	CA	All Other Monitors in California[c].	216–405	1–18	1–14	1–16
16–001–0010	ID	near Boise	178	4	3	3
16–005–0004	ID	Pocatello	162	39	38	44
16–029–0031	ID	Soda Springs	216	26	30	27
41–051–0080	OR	Portland	442	3	3	3
49–035–3006	UT	Salt Lake City	183	NA	NA	NA
49–035–2005	UT	Midvale	182	NA	NA	NA
49–035–3010	UT	Salt Lake City	178	NA	NA	NA

[a] NAA—nonattainment area.
[b] NA—Not available for monitors lacking a valid design value in the given year due to missing or incomplete data.
[c] This table only includes specific results for monitors within 215 km of the Nevada-California border. Other California monitors are summarized in one row.

Table 2 lists the annual 99th percentiles for SO_2 monitors that collected either three or four complete quarters of data in the specified year but lacked three consecutive years of complete data (*i.e.,* a design value) like the monitors in Table 1. Again, the only monitor exceeding the 2010 SO_2 NAAQS is located in the Miami nonattainment area.

TABLE 2—ANNUAL SO_2 99TH PERCENTILES FOR MONITORS IN NEIGHBORING STATES LACKING A DESIGN VALUE

[ppb]

Monitoring site	State	Area	Distance to Nevada border (km)	2016	2017	2018
04–007–0009	AZ	Miami NAA[a]	391	120	N/A[b]	NA
49–035–3006	UT	Salt Lake City	183	N/A	4	3

[a] NAA—nonattainment area.
[b] N/A—Not available, less than three complete quarters of data were collected for this monitor in the given year.

In concluding that Nevada would not impact receptors in the Hayden or Miami nonattainment areas in Arizona, Nevada's submittal noted several factors, including the prevailing wind direction in Las Vegas to the south and southwest and the significant distance, more than 300 miles (482 km), between the nonattainment areas and the nearest large generator of SO_2 emissions in southern Nevada, the now closed Reid Gardner Generating Station. At the closest point at Nevada's southern tip, the Hayden and Miami nonattainment areas are 350 km from the Nevada border, far outside the range within which we might expect a potential impact from SO_2 sources located in Nevada, given the localized range of potential 1-hour SO_2 emissions.

The data presented in Table 1 show that Nevada's SO_2 monitors, with sufficient data to produce valid 1-hour SO_2 design values, indicate that monitored 1-hour SO_2 concentrations in Nevada are between 5 percent (%) and 9% of the 75 ppb 1-hour SO_2 NAAQS. The Reno monitor is located within 50 km of the California border and the Las Vegas monitor is located within 50 km of the Arizona border. The highest SO_2 concentration within 300 km of Nevada is the Pocatello Idaho monitor, which is 59% of the NAAQS based on the 2018 design value and 162 km from the Nevada border. The low level of SO_2 at these air quality monitors in and near Nevada do not, by themselves, indicate any particular location that would warrant further investigation with respect to SO_2 emissions sources that might significantly contribute to nonattainment in neighboring states. However, because the monitoring network is not necessarily designed to find all locations of high SO_2 concentrations, this observation is not sufficient evidence by itself of an absence of impact at all locations in the neighboring states. We have therefore also conducted a source-oriented analysis.

2. Analysis of SO_2 Emissions Sources in Nevada and Neighboring States

To understand the potential for Nevada's emissions to contribute significantly to nonattainment in another state, we begin with a summary of the State's SO_2 emissions in Table 3 from the 2014 NEI.[25] The EPA believes a reasonable starting point for determining which sources and emissions activities in Nevada are likely to impact downwind air quality in other states with respect to the 2010 1-hour SO_2 NAAQS is by using information in the EPA's 2014 NEI. The NEI is a comprehensive and detailed estimate of air emissions for criteria pollutants, criteria pollutant precursors, and hazardous air pollutants from air emissions sources; it is updated every three years using information provided by the states and other information available to the EPA. The 2014 NEI (version 2) is the most recently available complete and quality assured dataset of the NEI that includes all emissions categories.

TABLE 3—SUMMARY OF 2014 NEI SO_2 EMISSIONS DATA FOR NEVADA BY SOURCE CATEGORY [a]

Category	SO_2 emissions (tons per year)
Fuel Combustion, Electric Generation	10,277
Fuel Combustion Industrial	2,967
Fires	840
Mobile	556
Fuel Combustion Commercial	642
Waste Disposal	293
Industrial Processes (non-combustion)	540
Other	61
Total Nevada SO_2 Emissions	16,178

[a] The sum of the categories does not add to the total due to rounding.

As shown in Table 3, the majority of SO_2 emissions in Nevada originate from fuel combustion at point sources. In 2014, SO_2 emissions from fuel combustion point sources accounted for approximately 85% of the State's SO_2 emissions.[26] With the closure of the Reid Gardner Generating Station, which accounted for over 15% of overall SO_2 emissions in the 2014 NEI, the SO_2 state-wide total should be substantially smaller once the 2017 emissions inventory is released. The next largest category of emissions is fire. According to the 2014 NEI, approximately 92% of fire emissions are from wildfires, which vary in location and quantity of emissions from year to year, while most of the other fire emissions come from prescribed burning. Of the remaining emissions (mobile, waste disposal, non-combustion industrial, and other, which make up approximately 9% of the state total), slightly more than half (about 5% of the state-wide total or 880 tons) originate in Clark County, which contains approximately 75% of Nevada's population, and the rest originate elsewhere throughout the State.

Emissions from the other listed source categories are more dispersed throughout the State, with the exception of McCarran Airport and Sunrise Landfill analyzed later in this notice. Due to the dispersed nature of these other source categories, their emissions are less likely to cause high ambient concentrations when compared to a point source on a ton-for-ton basis. Based on the EPA's analysis of the 2014 NEI SO_2 emissions data, the EPA considers it to be appropriate to focus the discussion on SO_2 emissions from Nevada's larger point sources (*i.e.,* those emitting over 50 tons per year (tpy) of SO_2), which are located within the ''urban scale,'' *i.e.,* within 50 km of one or more state borders.

Specifically, in 2014 60 percent of the statewide SO_2 emissions came from two facilities.[27] The first, the North Valmy Generating Station, is 124 km from the state border, well beyond the 50-km threshold zone considered to be a reasonable distance to evaluate emissions source impacts to neighboring states for purposes of this analysis. In addition, EPA recently considered a modeling analysis submitted by the NDEP to support its recommendation that the EPA designate the entire State of Nevada as attainment/unclassifiable for the 2010 SO_2 NAAQS.[28] The modeling was conducted in response to the Final Data Requirements Rule for the 2010 1-Hour SO_2 Primary NAAQS.[29] As required by the rule, Nevada identified the North Valmy Generating Station as a facility emitting more than 2,000 tpy of SO_2 in 2014.[30] Based on modeling that shows a maximum SO_2 concentration of 63 ppb, the EPA determined that the North Valmy Generating Station ''is not modeled to cause or contribute to violations of the 2010 SO_2 [NAAQS],'' and the EPA designated the area around North Valmy Generating Station, along with the rest of the State, as attainment/unclassifiable for the 2010 SO_2 NAAQS.[31]

The North Valmy Generating Station is located 124 km from the Nevada-Oregon border and 125 km from the Nevada-Idaho border. Based on 2017 facility reported emissions data, Nevada has no other facilities emitting more than 50 tpy of SO_2 within 50 km of the State's border that could potentially combine with the emissions from the North Valmy Generating Station to contribute to nonattainment in the nearby states of Idaho and Oregon. The closest facility to the North Valmy Generating Station is the TS Power Plant, which is slightly more than 50 km from the North Valmy facility and more than 130 km from the Nevada-Idaho and Nevada-Oregon borders. This information supports the EPA's proposed conclusion that the North Valmy facility, in combination with Nevada's other SO_2 emissions sources, will not contribute significantly to nonattainment of the 2010 SO_2 NAAQS in any other state.

The second facility contributing 60 percent of statewide SO_2 emissions in 2014 is the Reid Gardner Generating Station that ceased operation in 2017. Consequently, this facility does not warrant further investigation with respect to SO_2 emissions sources that

[25] The EPA's NEI is available at *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory.*

[26] Nevada's fuel combustion point sources listed in Table 3, for the purposes of this action, are comprised of all of the ''Fuel Combustion'' categories, *i.e.,* Fuel Combustion, Electric Generation; Fuel Combustion, Industrial; and Fuel Combustion, Commercial.

[27] In 2014, the North Valmy Generating Station emitted 7,430 tons of SO_2 and the Reid Gardner Generating Station emitted 2,506 tons of SO_2, per the 2014 NEI.

[28] 83 FR 1098 (January 9, 2018). The North Valmy Generating Station is specifically discussed in Chapter 26, Technical Support Document: Intended Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard, EPA, August 2017, which is available in the docket for today's notice.

[29] This Rule required sources emitting more than 2,000 tpy of SO_2 to characterize their air quality impacts through ambient air monitoring or dispersion modeling.

[30] The North Valmy Generating Station generated 1,588 tons of SO_2 emissions in 2017, per the 2017 NEI, which includes only facility reported point source emissions data at this time.

[31] Technical Support Document: Chapter 26 Intended Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Nevada, EPA, page 27, August 2017.

might significantly contribute to nonattainment in neighboring states.[32]

Table 4 below shows all other Nevada sources that generated more than 50 tpy of SO_2 emissions in 2017 located within 50 km of the state border, including Nevada's second largest active source of SO_2 emissions, the McCarran Airport. Table 4 also lists the nearest out-of-state neighboring sources emitting above 50 tpy of SO_2 because elevated levels of SO_2, to which SO_2 emitted in Nevada may have a downwind impact, are most likely to be found near such sources.[33] As shown in Table 4, the shortest distance between a Nevada source and a neighboring state source, with both emitting more than 50 tpy of SO_2, is 167 km. Furthermore, neighboring states have no sources of SO_2 emissions greater than 50 tpy located within 50 km of the Nevada border. Given the localized range of potential 1-hour SO_2 impacts, the data indicate that there are no additional locations in neighboring states that would warrant further investigation with respect to individual Nevada SO_2 emissions sources that might contribute to nonattainment of the 2010 SO_2 NAAQS.

TABLE 4—NEVADA SOURCES WITH SO_2 EMISSIONS GREATER THAN 50 TONS IN 2017 WITHIN 50 KM OF A NEIGHBORING STATE

Nevada source	2017 Emissions [a] (tons)	Distance to border	Distance to the closest neighboring SO_2 source more than 50 tpy (km)	Name of the closest neighboring SO_2 source more than 50 tpy	Neighboring state SO_2 source 2017 emissions (tons)
McCarran International Airport, Las Vegas.	467	37 km (AZ)	178	Lhoist North America (NA), Chemical Lime Nelson Plant.	1,678
Republic Services Sunrise (Landfill), Las Vegas.	191	23 km (AZ)	167	Lhoist NA, Chemical Lime Nelson Plant.	1,678
Lockwood Sanitary Landfill, Sparks	149	33 km (CA)	193	Sacramento International Airport	112
Lhoist NA and Granite Construction (Apex), Las Vegas.	140	32 km (AZ)	171	Lhoist NA, Chemical Lime Nelson Plant.	1,678
EP Minerals, Clark Plant, Clark	82	45 km (CA)	206	Sacramento International Airport	112
Reno-Tahoe International Airport	53	19 km (CA)	181	Sacramento International Airport	112

[a] Emissions are based on the 2017 facility reported NEI emissions data for point sources downloaded from *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data* on October 9, 2019, and contained in the docket for this notice.

3. Conclusion

In order to determine whether Nevada satisfied prong 1 for the 2010 SO_2 NAAQS, the EPA evaluated the State's 2013 SIP revision with respect to the following two factors: (1) SO_2 ambient air quality in Nevada and neighboring states; and (2) SO_2 emissions sources in Nevada and neighboring states. For the first factor, we identified no violating monitors near the Nevada border, and the only violating monitors in neighboring states are well outside the range within which we might expect them to be significantly impacted by interstate transport of SO_2 from Nevada. For the second factor, we identified no SO_2 sources within 50 km of the Nevada border that are likely contributing to a violation of the standard in another state, and we conclude that it is unlikely that sources farther from the border are leading to violations. Therefore, based on the analysis provided by the State in its SIP submission and the factors discussed above, the EPA proposes to find that Nevada will not cause or contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

D. The EPA's Evaluation of Prong 2—Interference With Maintenance

Prong 2 of the good neighbor provision requires state plans to prohibit emissions that will interfere with maintenance of a NAAQS in another state. The EPA considers that reasonable criteria to ensure that sources or emissions activities originating within Nevada will not interfere with its neighboring states' ability to maintain the NAAQS involves a close examination of the following: (1) Air quality trends in Nevada and neighboring states; (2) SIP-approved state and county measures that limit existing and new facility emissions; and (3) ambient concentrations of SO_2 in Nevada and neighboring states.

1. Air Quality Trends for Nevada and Neighboring States

As shown in Table 5 below, the statewide Tier 1 SO_2 emissions trends for Nevada and neighboring states have substantially decreased over time.[34] Since 2000, overall SO_2 emissions have decreased by 89% in Nevada, 66% in Arizona, 82% in California, 77% in Idaho, 82% in Oregon, and 74% in Utah. The size and geographic scope of these reductions strongly suggest that the reductions are not transient effects from temporary causes and suggest that a trend of increasing emissions is unlikely to occur in these states.

TABLE 5—TIER 1 SO_2 EMISSIONS TRENDS FOR NEVADA AND NEIGHBORING STATES (TPY) [a]

State	2000	2005	2010	2015	2017
Arizona	116,207	89,198	71,706	43,623	39,243
California	80,698	155,677	35,769	22,956	22,835
Idaho	23,015	22,962	11,718	5,396	5,386

[32] As discussed in the EPA's rescission of regional haze federal implementation plan for the Reid Gardner Generating Station, three of the Reid Gardner Generating Station's coal-fired boilers ceased operation in 2014 and the fourth ceased operation in 2017. See 83 FR 24952, May 31, 2018.

[33] Table 4 contains more recent data than Table 3 because the EPA has only released facility reported point source data from the 2017 NEI.

[34] Tier 1 emissions trends data do not include event emissions, which include forest fires and prescribed or intentionally set fires.

TABLE 5—TIER 1 SO_2 EMISSIONS TRENDS FOR NEVADA AND NEIGHBORING STATES (TPY) [a]—Continued

State	2000	2005	2010	2015	2017
Nevada	61,689	71,609	14,065	10,352	6,947
Oregon	53,237	24,916	19,625	9,500	8,182
Utah	56,039	51,945	28,932	19,865	14,832

[a] Data downloaded from *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data* (State Annual Average Emission Trend) and included in the docket for today's notice. See SO_2 Trends Tier 1.xlsx.

Table 6 shows the emissions trend since 2008 for all Nevada facilities that emitted more than 100 tpy of SO_2. While some facilities, such as McCarran International Airport, show an increasing trend, the increases are small relative to the decreases at the North Valmy Generating Station and Reid Gardner Generating Station, and the overall downward trend in SO_2 emissions in Nevada is illustrated by the row showing total point source emissions.

TABLE 6—SO_2 EMISSION TRENDS FOR NEVADA FACILITIES THAT HAVE EMITTED MORE THAN 50 tpy SINCE 2008 [a]

Facility name	EIS ID	2008	2011	2014	2017
NV Energy, North Valmy Generating Station	7302011	8,130	3,550	7,430	1,588
McCarran International (Airport)	9392311	264	272	265	467
EP Minerals LLC, Colado Plant	6030011	72	140	26	250
Republic Services Sunrise	9398611	163	197	209	191
Newmont Nevada Energy LLC, TS Power Plant	12758911	364	250	234	152
Lockwood Sanitary Landfill	6030711	0	69	43	149
Lhoist North America and Granite Const. (Apex)	8210711	180	229	152	140
Newmont Mining Corp. Twin Creek Mine	8178211	38	6	6	102
Nevada Cement, Fernley Plant	8179811	282	118	126	90
Barrick Goldstrike Mines Inc., GoldStrike Mine	8177811	40	28	50	70
Reno Tahoe Airport	9376411	NA [b]	50	25	53
Graymont Western U.S. Pilot Peak Plant	6673911	28	30	23	15
(Newmont) Gold Quarry	8210011	56	59	15	12
Foreland Refining (Eagle Springs)	8179311	76	85	77	7
NV Energy Reid Gardner Generating Station	6815611	941	1,423	2,506	[c] 0
Halliburton Energy Services Dunphy Plant & Crusher	7200311	194	3	1	0
All Nevada Point Source Emissions	NA	11,598	6,901	11,594	3,710
All Nevada Emissions	NA	20,951	13,578	16,175	NA

[a] Data from the NEI (files 2008 NEI V3, 2011 NEI V2, 2014 NEI V2, and 2017Oct) downloaded to 2002–2017 NV Facility Data.xlsx.
[b] NA—Not available.
[c] No emissions were reported to the EPA's NEI in 2017 for the Reid Gardner Generating Station, but emissions of 168 tons in 2017 were reported to the EPA's Clean Air Markets program (data query on 11/18/2019).

While these trends do not by themselves demonstrate that Nevada and neighboring states will not have issues maintaining the 2010 SO_2 NAAQS, when considered alongside low ambient concentrations in Nevada and neighboring states, as illustrated in Table 1, they provide further evidence that emissions of SO_2 from Nevada are unlikely to interfere with maintenance of the SO_2 NAAQS in other states.

2. Nevada's Air Quality Rules

The 2013 Nevada SIP submittal identifies many rules for controlling current and future SO_2 or sulfur oxides (SO_X) emissions.[35] The rules identified by the NDEP primarily regulate fuel combustion from large power plants as well as smaller stationary combustion sources (*e.g.,* portable generators). The NDEP retains authority over facilities that generate electricity by using steam produced from fossil fuels, even if located within Clark or Washoe counties. Emissions limits for SO_X are set by Nevada Administrative Code (NAC) 445B.22095 and NAC 445.22096. NAC 445B.22095 identifies factors considered in determining best available control technology (BACT) for major sources, and NAC 445B.22096 provides numeric emissions limits for specific sources where BACT has been established for the Nevada Energy Tracy Generating Station and the Nevada Energy Fort Churchill Generating Station.[36] NAC 445B.22047 and Article 8.2.1 limit SO_2 emissions from the combustion of fuel based on the heat input of the fuel in British Thermal Units (BTUs). NAC 445B.2205 limits SO_2 emissions from other processes. Nevada also identified many supporting regulations, such as rules covering definitions, calculations, and exemptions, including the following: NAC 445B.22043 (''Sulfur emissions: Calculation of total feed sulfur''); NAC 445B.22083 (''Construction, major modification or relocation of plants to generate electricity using steam produced by burning fossil fuels''); NAC 445B.308 (''Prerequisites and conditions for issuance of certain operating permits; compliance with applicable state implementation plan''); NAC 445B.310 (''Environmental evaluation: Applicable sources and other subjects; exemption''); and NAC 445B.311 (''Environmental evaluation: Contents; and consideration of good engineering practice stack height'').[37]

[35] SO_X is a group of gases that includes SO_2 and other less common oxides of sulfur in the atmosphere, see *https://www.epa.gov/so2-pollution.*

[36] This rule also discusses the Mojave Generation Station, which has been demolished (82 FR 48769, October 20, 2017), and the closed Reid Garner Generating Station.

[37] The NDEP implements its minor source (25 tpy) permitting through Nevada Revised Statutes 445B.310, 311 and NAC 308. See EPA's Technical Support Document, Evaluation of the Nevada Infrastructure SIP for 2008 Ozone, 2010 NO_2 and 2010 SO_2, 19. The NDEP implements its major source permitting through a prevention of

Continued

Clark County broadly identified permitting rules limiting current and future SO_2 and hydrogen sulfide emissions. More specifically, Clark County permits require the following: Reasonably available control technology (RACT) for minor sources (25 tpy for SO_2) and existing sources with significant emissions increases, if a RACT determination has been made;[38] BACT for major new sources and existing sources proposing significant increases in attainment areas;[39] and a limit on maximum increment increases of SO_2 for areas with a regional haze designation of Class I, Class II, or Class III.[40]

For limiting SO_2 emissions, Washoe County identified rules that control trace quantities of SO_X emissions from the storage of petroleum products, gasoline loading, gasoline unloading, and the use of organic solvents.[41] An additional SIP-approved Washoe County regulation that controls SO_X is Section 040.060 (''Sulfur Content of Fuel''). It limits the sulfur content to 0.7% by weight for solid fuels and 1.0% for liquid fuels burned at less than 250 million BTUs of heat input. For fuels burned at more than 250 million BTUs of heat input per hour, Section 040.060 provides a calculation that sets a maximum quantity of sulfur (in pounds per hour).

In conclusion, for interstate transport prong 2, we reviewed SO_2 emissions trends in Nevada and neighboring states, Nevada's SIP-approved rules regulating SO_2 and SO_X, and the technical information related to SO_2 ambient air quality and SO_2 emissions for interstate transport prong 1, as discussed above. Based on (1) the downward trend in SO_2 emissions in Nevada and neighboring states; (2) SIP-approved State and local measures that limit existing and new facility emissions; and (3) the low ambient concentrations of SO_2 in Nevada and neighboring states, we propose to determine that the 2013 Nevada SIP revision demonstrates that SO_2 emissions in the State will not interfere with maintenance of the 2010 SO_2 NAAQS in any other state, per the requirements of prong 2 of CAA section 110(a)(2)(D)(i)(I).

significant deterioration federal implementation plan.

[38] See Air Quality Regulation (AQR) 12.1.3.6(c)(1) and (2).

[39] See AQR 12.2.9.1 and 12.2.9.2.

[40] Microgram per meter cubed SO_2 limits for annual mean, 24-hour maximum, and 3-hour maximum, per AQR 12.2.3. The discussion of Element A in the EPA's Technical Support Document, Evaluation of the Nevada Infrastructure SIP for 2008 Ozone, 2010 NO_2, and 2010 SO_2 contains regulatory citations for Clark County rules, with the exception of maximum increment increases that can be found in the Clark County Regulations at AQR 12.2.3. and the variance procedure at 12.2.15.4.

[41] Washoe Rules 040.070, 040.075, 040.080, and 040.085.

III. Proposed Action

In light of the above analysis, the EPA is proposing to approve Nevada's infrastructure submittal for the 2010 SO_2 NAAQS as it pertains to section 110(a)(2)(D)(i)(I) of the CAA.

We will accept comments from the public on these proposals for the next 30 days and plan to follow with a final action. The deadline and instructions for submission of comments are provided in the **DATE** and **ADDRESSES** sections at the beginning of this proposed rule.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, 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 Clean Air Act. Accordingly, this proposed 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 proposed 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 Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

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

Dated: March 20, 2020.

John Busterud,

Regional Administrator, Region IX.

[FR Doc. 2020–06348 Filed 3–30–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket No. 15–80; FCC 20–20; FRS 16584]

Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on a proposed a framework to provide state and federal agencies with access to outage information to improve their situational awareness while preserving the confidentiality of this data, including proposals to: Provide direct, read-only access to NORS and DIRS filings to qualified agencies of the 50 states, the District of Columbia, Tribal

nations, territories, and federal government; allow these agencies to share NORS and DIRS information with other public safety officials that reasonably require NORS and DIRS information to prepare for and respond to disasters; allow participating agencies to publicly disclose NORS or DIRS filing information that is aggregated and anonymized across at least four service providers; condition a participating agency's direct access to NORS and DIRS filings on their agreement to treat the filings as confidential and not disclose them absent a finding by the Commission that allows them to do so; and establish an application process that would grant agencies access to NORS and DIRS after those agencies certify to certain requirements related to maintaining confidentiality of the data and the security of the databases.

DATES: Submit comments on or before April 30, 2020; and reply comments on or before June 1, 2020.

ADDRESSES: You may submit comments, identified by PS Docket No. 15–80, by any of the following methods:

- *Federal Communications Commission's Website: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. See the **SUPPLEMENTARY INFORMATION** section for more instructions.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For further information, contact Saswat Misra, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–0944 or via email at *Saswat.Misra@fcc.gov* or Brenda D. Villanueva, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–7005 or via email at *Brenda.Villanueva@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (*FNPRM*), PS Docket No. 15–80; FCC 20–20, adopted on February 28, 2020, and released on March 2, 2020. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW, Washington, DC 20554 or via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* The full text may also be downloaded at: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-63A1.pdf.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

I. Introduction

1. The Commission supports our Nation's incident preparedness goals and emergency response efforts by, among other things, collecting and providing accurate and timely communications outage and infrastructure status information via our Network Outage Reporting System (NORS) and Disaster Information Reporting System (DIRS). NORS and DIRS provide critical information about significant disruptions or outages to communication services, including among others, wireline, wireless, cable, broadcast (radio and television), satellite, and interconnected VoIP, as well as communications disruptions affecting Enhanced 9–1–1 facilities and airports. Given the sensitive nature of this data to both national security and commercial competitiveness, the outage data is presumed to be confidential.

2. Today when a major disaster or outage occurs, we make this information available to the Department of Homeland Security's (DHS) National Cybersecurity and Communications Integration Center (NCCIC). DHS uses this information to assess the needs of an affected area and to coordinate overall emergency response efforts with state and local first responders so that assets such as equipment, fuel, and personnel can be directed to where they are most needed.

3. Our experience over the years with major outages—from the 2017 hurricanes, tornadoes, and flooding, to power shutdowns in California and the latest earthquakes in Puerto Rico—all underscore the value of reliable and timely outage information to the rapid restoration of communications (including wireline and wireless telephone, television, radio, and satellite). This experience has also heightened our understanding of the crucial role state and local authorities can play in the successful restoration of disrupted communications. We thus now consider how more direct access to outage information might improve the situational awareness and ability of state and local authorities to respond more quickly to outages impacting their communities and to help save lives. Specifically, this Second Further Notice of Proposed Rulemaking proposes an information sharing framework that would provide state and federal agencies with access to NORS and DIRS information while also preserving the confidentiality of that data.

II. Background

4. In 2004, the Commission adopted rules that require outage reporting for certain communications providers to address ''the critical need for rapid, complete, and accurate information on service disruptions that could affect homeland security, public health or safety, and the economic well-being of our Nation, especially in view of the increasing importance of non-wireline communications in the Nation's communications networks and critical infrastructure.'' 69 FR 68859 (Nov. 26, 2004) (*2004 Part 4 Report and Order*).

5. Under these rules, certain service providers must submit outage reports to NORS for outages that exceed specified duration and magnitude thresholds. 47 CFR 4.9. Service providers are required to submit a notification into NORS generally within 30 minutes of determining that an outage is reportable to provide the Commission with timely preliminary information. The service provider must then either (i) provide an initial report within three calendar days, followed by a final report with complete information on the outage within 30 calendar days of the notification; or (ii) withdraw the notification and initial reports if further investigation indicates that the outage did not in fact meet the applicable reporting thresholds. 47 CFR 4.11.

6. All three types of NORS filings—notifications, initial reports, and final reports—contain service disruption or outage information that, among other things, include: The reason the event is reportable, incident date/time and location details, state affected, number of potentially affected customers, and whether enhanced 911 (E911) was affected. The Commission analyzes NORS outage reports to, in the short-term, assess the magnitude of major outages, and in the long-term, identify network reliability trends and determine whether the outages likely could have been prevented or mitigated had the service providers followed certain network reliability best practices. Information collected in NORS has contributed to several of the Commission's outage investigations and recommendations for improving network reliability.

7. NORS filings are presumed confidential and thus withheld from routine public inspection, 47 CFR 0.457(d)(vi), 4.2. The Commission grants read-only access to outage report filings in NORS to the NCCIC at DHS, but it does not currently grant access to other federal agencies, state governments, or other entities. DHS, however, may share relevant information with other federal agencies at its discretion. The Commission publicly shares limited analyses of aggregated and anonymized data to collaboratively address industry-wide network reliability issues and improvements.

8. In the wake of Hurricane Katrina, the Commission established DIRS as a means for service providers, including wireless, wireline, broadcast, and cable providers, to voluntarily report to the Commission their communications infrastructure status and situational awareness information during times of crisis. The Commission recently required a subset of service providers that receive Stage 2 funding from the Uniendo a Puerto Rico Fund or the Connect USVI Fund to report in DIRS when it is activated in the respective territories, 84 FR 59937, 59959–60 (Nov. 7, 2019) (*Puerto Rico & USVI USF Fund Report and Order*). DIRS, like NORS, is a web-based filing system. The Commission analyzes infrastructure status information submitted in DIRS to provide public reports on communications status during DIRS activation periods, as well as to help inform investigations about the reliability of communications following disasters.

9. The Commission treats DIRS filings as presumptively confidential and limits the disclosure of information derived from those filings. The Commission grants direct access to the DIRS database to the NCCIC at DHS. The Commission prepares and provides aggregated DIRS information, without company identifying information, to the NCCIC, which then distributes the information to Emergency Support Function #2 (ESF–2) participants, including other units in DHS, during an ESF–2 incident. ESF–2 is led by DHS and composed by other participants, including the Department of Agriculture, Department of Commerce, Department of Defense, General Services Administration, Department of Interior, and the Federal Communications Commission. Agencies use the analyses for their situational awareness and for restoration priorities for communications infrastructure in affected areas. The Commission also provides aggregated data, without company-identifying information, to the public during disasters.

10. In 2009, the California Public Utilities Commission (CPUC) filed a petition requesting that the Commission amend its rules in order to permit state agencies to directly access the Commission's NORS filings for outages filed in their respective states, Petition of the California Public Utilities Commission and the People of the State of California, ET Docket No. 04–35 (filed Nov. 12, 2009) (CPUC Petition). The Commission sought public comment on the CPUC's request.

11. In 2015, the Commission proposed to grant state governments ''read-only access to those portions of the NORS database that pertain to communications outages in their respective states,'' 80 FR 34321, 34357 (June 16, 2015) (*2015 Part 4 NPRM*). The Commission also asked if this access should extend beyond states and include ''the District of Columbia, U.S. territories and possessions, and Tribal nations.'' The Commission proposed to condition access on a state's certification that it ''will keep the data confidential and that it has in place confidentiality protections at least equivalent to those set forth in the federal Freedom of Information Act (FOIA).'' The Commission sought comment on other key implementation details, including how to ''ensure that the data is shared with officials most in need of the information while maintaining confidentiality and assurances that the information will be properly safeguarded.'' Similarly, in the *2015 Part 4 NPRM,* the Commission sought comment on sharing NORS filings with federal agencies pursuant to certain safeguards to protect presumptively confidential information.

12. In the *2016 Order and Further Notice,* the Commission found that the record reflected broad agreement that state and federal agencies would benefit from direct access to NORS data and that ''such a process would serve the public interest if implemented with appropriate and sufficient safeguards,'' 81 FR 45055, 45064 (July 12, 2016) (*2016 Part 4 Order and Further Notice*). The Commission determined that providing state and federal government agencies with direct access to NORS filings would have public benefits but concluded that the process required more development for ''a careful consideration of the details that may determine the long-term success and effectiveness of the NORS program.'' Finding that the record was not fully developed and that the ''information sharing proposals raise a number of complex issues that warrant further consideration,'' the Commission directed the Public Safety and Homeland Security Bureau (PSHSB) to further study and develop proposals regarding how NORS filings could be shared with state commissions and federal agencies in real time, keeping in mind the information sharing privileges already granted to DHS.

13. The Bureau subsequently conducted *ex parte* meetings to solicit additional viewpoints from industry, state public service commissions, trade

associations, and other public safety stakeholders on the issue of granting state and federal government agencies direct access to NORS and DIRS filings.

14. This Second Further Notice of Proposed Rulemaking is part of our overarching effort to promote the reliability and redundancy of communications service in the United States. For example, the Commission is undertaking a comprehensive re-examination of the Wireless Resiliency Cooperative Framework to ensure that it is meeting the needs of communities, with a particular focus on increasing wireless service provider coordination with backhaul providers and electric utilities. Two federal advisory committees to the Commission, the Broadband Deployment Advisory Committee (BDAC) and the Communications Security, Reliability, and Interoperability Council VII (CSRIC VII) are developing recommendations to improve broadband and broadcast resiliency, respectively. PSHSB conducted an investigation into the preparations for and impact of 2018's Hurricane Michael on communications services and issued a report with recommendations to improve future recovery efforts. The Bureau also sent letters to wireless providers seeking information on their preparations for electric power shutoffs and wildfires in California, and it conducted outreach with communications and electric industry stakeholders to assess lessons learned.

III. Discussion

15. Based on the record before us, the majority of commenters agree that sharing NORS and DIRS information with state and federal agencies—in a manner that preserves the confidentiality of that information—would provide important public safety benefits. Accordingly, we propose a framework for granting state and federal government agencies direct access to NORS and DIRS filings that will assist agencies in their efforts to keep the public safe while preserving confidentiality, ensuring appropriate access, and facilitating reasonable information sharing.

A. Sharing NORS Filings With State and Federal Agencies

16. NORS filings contain timely information on communications service disruptions or outages impacting a provider's networks. For example, NORS filings may include useful information about the operational status of communications services or 911 elements that have been affected, as well as incident date, time, and location details. The Commission previously found that sharing NORS data with state and federal agencies would serve the public interest—provided that appropriate and sufficient safeguards were implemented. We now propose to reaffirm this finding and to refresh the record.

17. The Puerto Rico Telecommunications Bureau shared its experience in responding to Hurricane Maria in 2017, specifically that the outages impacted communication services for the government agencies responsible for providing essential services. Further, the Puerto Rico Telecommunications Bureau strongly encouraged the Commission to grant state access to NORS so that the agency can coordinate assistance to companies and to emergency government agencies in order to restore communication services and assist its citizens. The Massachusetts Department of Telecommunications and Cable (Massachusetts DTC) in turn argues that state agencies need ''timely, unrestricted access to accurate outage information in order to respond quickly and maintain public safety.'' Massachusetts DTC supports state access to NORS, citing the specific challenges it faced in accessing accurate and reliable information during the nationwide CenturyLink outage in December 2018, which also disrupted 911 service throughout the state. Massachusetts DTC states that during the December 2018 outage, ''misinformation was disseminated'' regarding the extent of the state's 911 outages.

18. We believe that subject to appropriate safeguards, giving qualified state and federal agencies NORS access would help restore affected communications and ultimately help save lives. To what extent are state or federal agencies' efforts to ensure the safety of the public frustrated by the fact that information about communications outages is either difficult to obtain or unavailable? Have there been recent public safety incidents where state or federal agencies could have led a more successful response had they been granted direct access to NORS filings at the time of the incident? How would direct access to NORS filings have assisted in the response for such public safety incidents? Are there additional benefits associated with granting direct access to NORS that we should consider?

B. Sharing DIRS Filings With State and Federal Agencies

19. As with NORS data sharing, we propose sharing DIRS filings with eligible state and federal agencies. Unlike NORS filings, which provide a baseline measure for network reliability in a jurisdiction prior to and after disasters, DIRS filings are focused on network status during disasters and in their immediate aftermath. As emergency management officials in California have reported, their currently available resources for identifying the status of communications networks reflect data gaps and inconsistencies at times, which make it difficult for officials to make informed emergency management decisions at the local level, such as identifying and knowing how to move the public of out danger and how to report ''medically-difficult situations.''

20. DIRS filings, on the other hand, contain timely information about the operational status of service providers' networks and the associated infrastructure equipment, typically submitted on a daily basis during disaster conditions. DIRS filings also reflect a snapshot of whether specific service provider infrastructure equipment is running on backup power or out of service, as well as the operational status of 911 call centers. As we have found in past communications outages following a disaster, information indicating which counties have a large percentage of its cell towers out of service can provide state authorities the situational awareness they need to appropriately address the communications needs of vulnerable populations in affected areas. After its experience with Hurricane Maria, the Puerto Rico Telecommunications Bureau shared that the DIRS information that it received from communication service providers, not available from the DIRS public reports, was helpful and future access to DIRS information would be an ''essential tool'' to coordinate assistance to the companies and emergency government agencies in order to restore communication services and assist citizens affected by an outage. For these reasons, we believe that sharing DIRS information with qualified state and federal agencies would help them to better direct their limited resources, including field staff, to areas of most need, thereby enhancing their communications response and recovery efforts in times of disaster. Service providers who report in DIRS submit information as frequently as on a daily basis. Thus, the information submitted may often represent near-real time status updates on critical communications infrastructure inside the counties most devasted during a

natural disaster like a category 5 hurricane or wildfire.

21. Moreover, because the Commission affirmatively waives mandatory NORS reporting requirements for service providers that voluntary report in counties where DIRS is activated, DIRS sharing will provide more complete and actionable status of communications outages. As the Michigan Public Service Commission observed, a state agency would have an ''incomplete picture of outages'' without access to both NORS and DIRS whenever DIRS is activated.

22. We seek comment on our analysis and these anticipated benefits. To what extent would our proposal to share DIRS filings with state and federal agencies improve the effectiveness of response and recovery efforts during and after disasters and emergencies? Are there other, equally effective methods that state and federal agencies may already use to obtain communications status information on a daily basis, especially during and after a devastating event such as a hurricane or wildfire, that does not require access to DIRS? Conversely, what, if any, harms may arise from granting state and federal agencies access to DIRS information? Given that service providers may voluntarily report confidential information in DIRS, we seek comment on whether federal and state agency access to DIRS filings would in any way reduce service provider participation or diminish the level of detail that service providers submit in DIRS. To what extent would any such harms outweigh the benefits of sharing that information? Could those harms be mitigated through the implementation of the safeguards proposed below, and if so, to what extent?

C. Eligible State, Federal, and Tribal Nation Government Agencies

23. We believe that providing state and federal agencies, including Tribal Nation government agencies, access to NORS and DIRS information will help promote the timely restoration of communications in affected communities. However, access to NORS and DIRS must be balanced against a need to safeguard and protect the presumed confidentiality of that information. We therefore believe it is necessary to limit the types of agencies that are eligible to receive direct access to NORS and DIRS. We propose that direct access to NORS and DIRS be limited to agencies acting on behalf of the federal government (we note that the NCCIC of DHS already has direct access to NORS and DIRS information; we do not propose to modify the terms by which the NCCIC accesses this information), the fifty states, the District of Columbia, Tribal Nation governments, and United States territories (including Puerto Rico and the U.S. Virgin Islands) that reasonably require access to the information in order to prepare for, or respond to, an event that threatens public safety, pursuant to its official duties (*i.e.,* agencies with a ''need to know''). Henceforth, we use the term ''state'' in this *Further Notice* to broadly refer to any of the fifty states, the District of Columbia, tribal governments, and United States territories. For purposes of our proposal, we use the term ''agency'' to refer to any distinct governmental department, commission, board, office, or other organization established to fulfill a specific purpose or role, including a state public utility commission or state department of public safety. We also propose that NORS and DIRS information accessed by these agencies should only be used for public safety purposes. We believe that this proposal provides NORS and DIRS access to the agencies that are in the best position to use outage and infrastructure status information to promote public safety across their jurisdictions. We seek comment on our definition of ''need to know'' and on any objective criteria that would be sufficient or necessary for a state or federal agency to establish that it satisfies the ''need to know'' standard. What supporting materials should a state or federal agency provide to the Commission to support its assertion that it has a ''need to know'' as a condition of access to the NORS and DIRS data? We seek comment on the public safety purposes for which eligible agencies may use NORS and DIRS information, as well as on our proposal to condition access to this information on its use for public safety purposes only.

24. While local agencies will not be able to access NORS and DIRS directly under our proposal, we note that these agencies generally fall within the oversight jurisdiction of state agencies that are eligible. Therefore, the local entities would be in a position to obtain NORS and DIRS filings or information from an affiliated state agency, on a case-by-case basis, provided that the state agency finds that the local entities have a ''need to know'' justification. We further believe this approach is necessary for a NORS and DIRS information sharing framework to be administrable by the Commission, as county and local eligibility would be likely to result in tens of thousands of applications for access, which would take significant time to process and place significant burdens on Commission staff. We seek comment on our proposal.

25. Are there reasons why local entities require direct access to NORS and DIRS filings, and if so, how could these filings be protected from improper disclosure in view of the extremely large number of such local entities in the nation? Are there other entities, besides the state and federal agencies that we have identified above, that also should be eligible to participate in the proposed information sharing framework? How can we best balance addressing the public safety need for enhanced situational awareness against the risk of inadvertent disclosure of NORS and DIRS information, particularly given the large number of local entities in the nation?

26. For example, should additional criteria be applied to determine whether a specific type of local entity (*e.g.,* local alert-originating entities) should be granted direct access to NORS and DIRS filings? If so, what should those additional criteria be? Should we introduce additional criteria for state-level agencies, such as limiting access to certain types of state agencies (*e.g.,* state public safety and emergency management departments)? Should we exclude from eligibility agencies located in states that have diverted or transferred 911/Enhanced 911 (E911) fees for purposes other than 911/E911? If so, how should we address conditions of access for states that have inadequately responded to Commission inquiries as to their practices for using 911/E911 fees? Relatedly, should the types of federal agencies eligible for direct access to NORS and DIRS filings be limited and if so, what criteria should we consider?

27. *Tribal Nation Governments.* We seek comment on our inclusion of Tribal Nation governments in today's proposed information sharing framework. Given the rural location of many Tribal Nation governments, there may be fewer providers offering service in Tribal lands and each piece of communications equipment may be more critical to maintaining connectivity. Does this consideration weigh in favor of different standards for determining whether Tribal Nation government agencies should be granted access to NORS and DIRS filings compared to the other government agencies described in today's proposal? If so, what alternative standards should we use to best tailor our proposal to Tribal Nation governments?

D. Confidentiality Protections

28. The Commission currently treats NORS and DIRS filings as presumptively confidential. This means that the filings and the information contained therein would be withheld from public disclosure, shared on a limited basis to eligible entities, and provided to others in summarized and aggregated form and only in narrow circumstances. We propose to extend this policy by requiring that participating state and federal government agencies treat NORS and DIRS filings as confidential unless the Commission finds otherwise. For clarity, ''eligible agencies'' refers to agencies that qualify for direct access to NORS and DIRS under this proposal, while ''participating agencies'' refers to agencies that have applied for and been granted direct access by the Commission.

29. We continue to believe that NORS filings should be presumptively confidential due to the ''sensitive data'' they contain that ''could be used by hostile parties to attack . . . networks, which are part of the Nation's critical information infrastructure.'' We also continue to believe that DIRS filings should be presumptively confidential ''[b]ecause the information that communications companies input to DIRS is sensitive, for national security and/or commercial reasons.'' We remain concerned that our national defense and public safety goals could be undermined if information from outage reports could be used by malicious actors to harm, rather than improve, the nation's communications infrastructure.

30. Further, we continue to be sensitive to the notion that the public disclosure of the NORS information, and more likely, the public disclosure of voluntarily submitted DIRS information, could make ''regulated entities less forthright in the information submitted to the Commission'' due to the ''likelihood of substantial competitive harm from disclosure'' of their submitted outage or infrastructure status information. We seek comment on these views and on any alternative approaches. We note that some service providers have recently announced plans to publicly release outage information not previously disclosed. We seek comment on the status of current policies, as well as any future plans, of service providers with regard to publicly releasing outage and infrastructure status information, including specific details as to the types of information that providers intend to release and the circumstances under which they will release it. Verizon has argued that ''increased public disclosure of company-specific outage information will further improve information flow and transparency during disasters and other emergencies without compromising competitively sensitive data.'' We seek comment on how this argument should affect our views on the presumption of confidentiality afforded to NORS and DIRS data.

31. Moreover, we seek to provide confidence to NORS and DIRS filers that the information they submit would continue to be protected against public disclosure at its current level and to ensure consistency in the information that is publicly disclosed. We believe that a uniform confidentiality standard for granting state and federal agencies access to NORS and DIRS filings would help secure these results. We therefore propose that a participating agency's direct access to NORS and DIRS filings be conditioned on the participating agency agreeing to treat the filings as confidential and not disclose them absent a finding by the Commission that allows them to do so. We propose that participating agencies that seek to disclose information would request the Commission's review, which would occur in the same manner that the Commission reviews requests for disclosure under FOIA. This proposal mirrors the way in which federal agencies share homeland security information with state governments under section 892 of the Homeland Security Act of 2002, in which the federal agency remains in control of the information and state law that otherwise authorizes disclosure of information does not apply, 6 U.S.C. 482(e). We believe that our proposal would limit distribution of the information for unauthorized purposes, ensure the security and confidentiality of the information, and protect the rights of companies that submit the information. We seek comment on this approach.

32. We seek comment on alternative proposals that may address confidentiality concerns. Do any states have substantially different disclosure standards than federal FOIA and, if so, would this condition be satisfied in jurisdictions with more permissive state open record laws or with court decisions favoring more permissive disclosure? We note that the Commission has dealt with similar issues before. With respect to competitively sensitive information submitted by carriers with respect to the North American Numbering Plan, the Commission recognized that some states had open record laws that might not allow state public utility commissions to protect the information from public disclosure. The Commission stated that it would work with those commissions to enable them to obtain the information they needed while protecting the confidential nature of the information. We acknowledge that in all cases, agencies would need to determine whether they can certify to the Commission that the agency would uphold the confidentiality protections we propose. We seek comment on whether these approaches are appropriate and workable here. Should the Commission rely on additional procedures to protect confidential materials from public disclosure by participating state or federal government agencies in this context?

33. To further ensure consistency in disclosure and confidence that submitted information will continue to be protected as it is today, we also propose to require participating state and federal agencies to notify the Commission on issues related to confidentiality in two instances. First, we propose that state and federal agencies notify the Commission within 14 calendar days from the date the agency receives requests from third parties for NORS filings and DIRS filings, or related records. This would provide the Commission the ability to notify the original NORS or DIRS submitter and give them an opportunity to object. Second, we propose that state and federal agencies notify the Commission at least 30 calendar days prior to the effective date of any change in relevant statutes or rules that would affect the agency's ability to adhere to the confidentiality protections that we require. This would provide the Commission with an opportunity to determine whether to terminate an agency's access to NORS or DIRS filings or take other appropriate steps as necessary, before the agency is no longer in a position to protect this information. We seek comment on this approach or on any alternative approaches that may achieve the stated goals.

E. Proposed Safeguards for Direct Access to NORS and DIRS Filings

1. Read-Only Direct Access to NORS and DIRS

34. We believe that agencies should receive access to NORS and DIRS in a format that reduces or eliminates the risk that their employees would make unauthorized modifications to the filings, whether unintentional or malicious. The current NORS database only allows users assigned to a company to modify reports submitted by that company. Preventing such modifications would ensure the

accuracy of the Commission's oversight work and that of its partners, who rely on the accuracy of NORS and DIRS filings at all times. We thus renew our proposal that participating state and federal agencies be granted direct access to NORS and DIRS filings in a read-only manner. Many commenters to the *2015 Part 4 NPRM* supported a read-only access approach. For example, Verizon stated that ''limit[ing] access to read-only format is [an] appropriate safeguard'' based on ''public safety, security, and competitive sensitivities.'' We seek further comment on the proposed read-only approach. Have any developments occurred since 2015, when we proposed to grant state governments read-only access, that weigh in favor or against providing access in a read-only manner? In addition, we currently require each user account in NORS and DIRS to use a password to access the systems. We seek comment on whether we should implement other technology protections to prevent unauthorized access to these databases given today's proposal, which would expand the number and scope of individuals with access to NORS and DIRS.

35. We believe that providing participating agencies with direct access to historical NORS and DIRS information would allow them to identify trends in outages and infrastructure status that would further enhance their real-time recovery and restoration efforts. We thus propose to grant participating agencies access to NORS and DIRS filings made after the effective date of this proposed information sharing framework, even if the agency begins its participation at a later date. Historical information will allow agencies to determine outage and infrastructure status baseline levels in their jurisdictions and identify trends, so that they can better predict and respond to emerging exigencies more rapidly than would otherwise be possible. We propose to limit access agency access to filings made after the effective date of this framework to address potential concerns that service providers may have about a potential dissemination of filings that they originally made to the Commission under an expectation that we would keep the filings presumptively confidential and withhold them from disclosure, even from federal and state government agencies that might seek them.

36. Are there reasons why we should not provide an agency access to filings after the effective date and prior to their participation in the proposed framework? Are there reasons that we should provide access to all historical filings that can be made available or, instead, that are made as of the date of today's proposal? The Commission estimates internal costs of approximately $50,000 to revise its NORS and DIRS processes to ensure the compatibility of the NORS and DIRS databases with historical (*e.g.,* non-multistate) filings. We seek comments on these costs. Alternatively, should participating agencies' access to NORS and DIRS information be limited to timeframes relevant to specific disasters or other events that threaten public safety for which those agencies are contemporaneously preparing or responding?

2. Sharing of Confidential NORS and DIRS Information

37. We recognize that, in many cases, there are individuals, including key decision-makers and first responders, who would not directly access NORS and DIRS and yet play a vital role within their respective jurisdictions in ensuring public safety during times of crisis. We believe there would be significant benefit in ensuring that these individuals also have access to the information in NORS and DIRS filings, in whatever form is most useful to them in furtherance of their duties. Accordingly, for each participating state or federal government agency, we propose to allow individuals granted credentials for direct access to NORS and DIRS filings to share copies (*e.g.,* printouts) of NORS and DIRS filings, in whole or part, and any confidential information derived from NORS or DIRS filings (collectively, confidential NORS and DIRS information), within or outside their participating agency, on a strict ''need to know'' basis. Confidential NORS and DIRS information may include, as illustrative examples, presentations, email summaries, and analysis and oral communication reflecting the content of, or informed by, NORS and DIRS filings. We also propose to require that this information be used for public safety purposes only.

38. A ''need to know'' basis exists where the recipient would need to reasonably require access to the information in order to prepare for, or respond to, an event that threatens public safety, pursuant to the recipient's official duties. We propose that the sharing of confidential NORS and DIRS information be allowed ''downstream'' as well, meaning that once an agency with direct NORS and DIRS access shares confidential NORS and DIRS information with a recipient, that recipient can further summarize and/or share the information with others who also have a ''need to know.'' To ensure that non-participating agencies maintain the confidentiality of NORS and DIRS information, we propose to require that participating agencies condition access to this information on non-participating agencies' certification that it will treat the information as confidential, not disclose it absent a finding by the Commission that allows them to do so, and securely destroy information when the public safety event that warrants their access to the information has concluded. We propose to hold participating agencies responsible for inappropriate disclosures of NORS and DIRS information by the non-participating agencies with which they share it and expect that participating agencies will take all necessary steps to have confidence that confidentiality will be preserved. We also note that individuals or agencies that make inappropriate disclosures of NORS in DIRS information may be subject to disciplinary action and/or liability under federal, Tribal and/or state laws that protect data, containing, *e.g.,* trade secrets or other commercially sensitive information. We seek comment on any federal and non-federal restrictions that may apply to the improper dissemination of private information by employees of participating agencies and those with whom they share NORS and DIRS information, and the consequences of violating them.

39. We seek comment on this approach of participating agencies agreeing to be held responsible for downstream information sharing as a pre-requisite for accessing NORS and DIRS information. Would the measures proposed be sufficient to ensure that downstream recipients preserve the confidentiality of NORS and DIRS information they receive? Relatedly, we seek comment on state laws and penalties would be sufficient to deter any inappropriate disclosure of NORS/DIRS information. If these measures and state laws are not sufficient, we seek comment on any additional measures that we should include to ensure that confidentiality is maintained when sharing NORS and DIRS information downstream. For example, to what extent should the Commission hold downstream recipients responsible when NORS and DIRS information is improperly disclosed and what should the consequences be (apart from, for instance, immediate cut-off of access for the agency that accessed the NORS and DIRS filings)? To what extent would additional measures hinder the ability of first responders and other emergency

response officials to receive critical information, thereby undermining their restoration and recovery efforts? Are there measures we can take that would adequately preserve the confidentiality of information that was earlier shared downstream after the public safety event that necessitated sharing is over? We seek comment on the public safety purposes for which downstream recipients may use NORS and DIRS information, as well as on our proposal to condition access to this information on its use for public safety purposes only.

40. We propose that the sharing agency determine whether a ''need to know'' exists on the part of the recipient. We believe that the sharing agency is in a strong position to make this determination based on their ''on the ground'' knowledge of the public safety-related activities of agencies that are not eligible to access NORS and DIRS directly. Moreover, we find that it would be impractical for Commission to either make these case-by-case determinations, which would often be made during on-going exigencies.

41. Under our proposals, confidential NORS and DIRS information could be shared when the recipient has a ''need to know'' basis, for example, in the following illustrative scenarios:

(a) An employee with direct NORS and DIRS access in a participating agency may share confidential NORS and DIRS information within any number of agency employees or contractors (*e.g.,* a public utility agency may share information among its employees and contractors to resolve a power outage situation);

(b) an employee with direct NORS and DIRS access in a participating agency may share confidential NORS and DIRS information with the employees and contractors of other participating or non-participating agencies within the same state/jurisdiction or in a different state/jurisdiction (*e.g.,* a public utility agency may share information with a neighboring state governor's office responding to a hurricane; or a state emergency management agency may share information with a region-level fire chief);

(c) an employee at a non-participating agency who receives the confidential NORS and DIRS information on a ''need to know'' basis may then share the information with an employee at another non-participating agency based on the latter's ''need to know'' (*e.g.,* a region-level fire chief may share information with a county sheriff's department for the purpose sending first responders to an affected area).

We seek comment on this proposal, as well as on other ways to permit sharing of NORS and DIRS information by participating agencies when such sharing helps to address public safety issues.

42. Does our approach provide sufficient benefits to key decision-makers and first responders to outweigh the risk of potential over-disclosure of confidential information? What additional steps can we take, if any, to mitigate such risks while preserving the benefits? What would be the burden to participating agencies and others if we were to take additional steps? For example, should we require, as a condition for access to the data, that participating agencies notify the Commission when they share NORS and DIRS information with a downstream recipient, and if so, what form should the notification take? Should notification include specific information on which individuals, localities, and Tribal lands are receiving this information downstream and describe the basis for any ''need to know'' determinations? Should notification be provided to the Commission within a certain timeframe after the sharing occurs? Alternatively, in order to ensure that participating agencies' focus during a public safety event remains on response and restoration, should notification be provided to the Commission in advance in the form of a list of those downstream agencies with which it is anticipated the information will be shared? For such an approach, we seek comment on whether, in the event there is an exigency that necessitates sharing with agencies that were not on the advance list, participating agencies should be given a certain period of time to notify the Commission of additional downstream agencies with which the information was shared?

43. What steps can we take to ensure that agencies are handling and sharing confidential information appropriately? Are there reasons why downstream sharing or sharing outside an agency should be more limited than described here? Should we adopt further measures to control or limit the downstream sharing of confidential NORS and DIRS information beyond the specific individuals with direct access, and if so, what specific measures should we adopt and what should be the consequences if they are not followed? On the other hand, should downstream agencies without access to NORS and DIRS be allowed to keep NORS and DIRS data, perhaps to allow it to be studied in an after-action review of their response efforts? To the extent that commenters recommend less or more restrictive frameworks (including ones that nonetheless facilitate broader sharing in emergency situations), we request that commenters identify in detail how such mechanisms would work, as well as their benefits and costs.

3. Disclosing Aggregated NORS and DIRS Information

44. We believe that the aggregated information in NORS and DIRS filings can be of significant benefit to the general public. For example, this information can be used to keep the public informed of on-going emergency and network outage situations, timelines for recovery, and geographic areas to avoid while disaster and emergency events are ongoing. We therefore propose to allow agencies to provide aggregated NORS and DIRS information to any entity including the broader public (*e.g.,* by posting such information on a public website).

45. We define ''aggregated NORS and DIRS information'' to refer to information from the NORS and DIRS filings of at least four service providers that has been aggregated and anonymized to avoid identifying any service providers by name or in substance. We seek comment on this approach and whether there are other appropriate aggregation requirements that we should consider. For example, should we require aggregation over a larger number of service providers? We note that allowing the public disclosure of aggregated NORS and DIRS information is consistent with the Commission's own practices.

46. Here, we propose extending the ability to generate and supply aggregated NORS and DIRS information to participating state agencies themselves. We believe that granting participating agencies this flexibility will allow them to disseminate information to the broader public and better fulfill their public safety missions. Moreover, we believe that this proposal carries at most a minimal risk of the over-disclosure of sensitive information since participating agencies must anonymize aggregated NORS and DIRS information. We seek comment on this proposal. Are there any specifics steps that agencies should take beyond aggregating over four or more providers to ensure that NORS and DIRS information is adequately aggregated and anonymized prior to disclosure? Should we adopt specific measures to ensure that, as a condition of access to NORS and DIRS filings and information, participating agencies adequately aggregate and anonymize the information in NORS and DIRS filings and information prior to disclosure? If so, what should those measures be and what should be the consequences if they are not followed?

4. Direct Access to NORS and DIRS Filings Based on Jurisdiction

47. We observe that an outage or a disaster—such as a hurricane—may cross multiple jurisdictional boundaries. We believe that agency access to NORS and DIRS filings should account for this reality. We propose that a participating agency receive direct access to all NORS notifications, initial reports, and final reports and all DIRS filings for events reported to occur at least partially in their jurisdiction. For federal agencies, this generally means for events reported to occur anywhere in the country. For state agencies, this generally means for the events reported to occur at least partially in the state's geographic boundaries. Commenters support granting states access to NORS filings and DIRS filings for events that occur within their jurisdiction. We propose that it would serve the public interest for participating state agencies to access NORS and DIRS filings for outage events and disasters that occur in portions of their respective state but also span across additional states.

48. We seek comment on this proposal. How would participating agencies make use of NORS and DIRS filings that affect states beyond their own? Do participating agencies have a ''need to know'' about the effects of multistate outages and infrastructure status outside their jurisdiction? Do county or local agencies that cannot access NORS and DIRS under our proposal have similar needs? What benefits are expected to arise from granting participating state agencies access to these NORS and DIRS filings? Are there any harms that may potentially arise from granting participating state agency access to multistate outage and infrastructure information? As an alternative to our proposal, should participating agencies' access to NORS and DIRS filings be limited only to those aspects of multistate outages that occur solely in their jurisdiction? Are there specific aspects of multistate outages for which participating agencies do not have a ''need to know?'' In addition, we anticipate that there may be situations where a participating agency may share confidential information derived from DIRS or NORS filings with non-participating state or federal agencies on a strict ''need to know'' basis. We seek comment on this view.

49. Does a participating federally recognized Tribal Nation's government agency that receives direct access to NORS and DIRS filings have a ''need to know'' about events that occur entirely outside of its borders but within the border of one the state where the Tribal land is located? For example, should a participating Tribal Nation agency located in Arizona receive direct access to filings throughout all of Arizona? Conversely, should a state agency receive direct access to NORS and DIRS filings reflecting events occurring entirely within Tribal land located in the state's boundaries? For example, should a participating Arizona state agency receive direct access to NORS and DIRS filings for outages occurring only within Tribal lands located in Arizona? We believe that both aspects of this approach are justified given the technical nature of many outages, where equipment located in a Tribal land affects service in the traditional state(s) surrounding the territory, and vice versa. We seek comment on this approach. Are there any harms that may potentially arise from granting Tribal Nation authorities access to outage and infrastructure information outside of their territories? As an alternative to our proposal, should Tribal Nation authorities' access to NORS and DIRS filings be limited only to those aspects of multistate outages that occur solely in their territories? Are there specific aspects of multistate outages for which these authorities do not have a ''need to know?''

50. We seek comment on the technical implementation of our proposals. Since the DIRS form already requests filers to include data at the county level, we do not anticipate that service providers will need to modify their DIRS reporting processes to accommodate multistate reporting. We thus estimate that the nation's service providers will incur minimal, if any, burdens related to DIRS. We seek comment on this assessment.

51. For NORS filings, however, commenters raise concerns that sharing filings with state agencies will require technical adjustments for both the service providers' systems and the Commission's internal systems. For example, the current NORS forms are designed with a drop-down menu for a user to select the state where the outage occurred. A NORS user may select either a single state or the general option of ''MULTI STATE'' in the current form without specifying the individual states. This existing approach makes it challenging to identify which multistate outage filings each participating state agency should have permission to access. As Intrado noted previously, in order to filter and display the NORS filings that pertain to any given state, including multi-outage filings, the NORS form would require adjustments.

52. We propose to change the Commission's NORS form to allow users to select more than one state when submitting a NORS filing. This approach will allow us to limit state agencies' access to only those outages that occur within their states. We expect that service providers will need to make corresponding changes to their NORS reporting processes to provide us with information on a state-by-state basis. We currently estimate that the nation's service providers will incur total initial set up costs of $3.2 million based on our estimate of 1,000 service providers incurring costs of $80 per hour and spending 40 hours to update or revise their software used to report multi-state outages to the Commission in NORS. In developing this analysis, the Commission estimates that the cost of a software developer of systems software is $80/hour, inclusive of wage and benefits. We seek comment on the burden and timelines associated with such modifications. We seek comment on whether the benefits associated with these modifications would outweigh the costs incurred by service providers.

53. We seek comment on this approach, as well as on any potential alternatives, including any adjustments, if needed, to account for Tribal land borders. For example, we seek comment on whether, instead of modifying the NORS form, we should require service providers to submit several state-specific filings instead of submitting single aggregated filings for each outage that list all affected states.

5. Limiting the Number of User Accounts per Participating Agency

54. We believe that it would be beneficial to limit the number of users at an agency who have access to NORS and DIRS filings to minimize the potential for over-disclosure of the sensitive information contained in the filings. At the same time, we recognize that agencies typically employ teams of staff members, rather than a lone individual, to provide ''around the clock'' coverage for incident response. We propose to presumptively limit the number of user accounts granted to a participating agency to five NORS and DIRS accounts per state or federal agency with additional accounts permitted on an agency's reasonable showing of need. We further propose to require that an agency assign each user account to a unique employee and manage the process of reassigning user accounts as its roster of employees changes (*e.g.,* due to arrivals and departures or a chance in roles at the participating agency). We believe that these requirements will limit access to

NORS and DIRS information to the employees that are intended to receive it and allow participating agencies to identify misuse by specific employees.

55. We seek comment on this approach. For example, are there reasons why the Commission, rather than participating agencies, should be responsible for assigning individualized user accounts, *i.e.,* accounts corresponding with specific named employees, and for re-assigning user accounts as participating agency personnel changes with time? We observe that AT&T, based on concerns for safeguarding the commercially and national security-sensitive nature of NORS information, proposed a similar approach, suggesting that we impose a limit of ''three individuals unless the state can provide adequate justification for more employees.'' We agree with a presumptive limit, but we believe that the presumptive limit should be at least five employees, given our understanding of the size and complexity of network monitoring and emergency response operations at many state and most federal agencies. Other commenters to the *2015 Part 4 NPRM* generally support limiting the number of direct access users to NORS.

56. We recognize that some agencies—such as federal agencies or state agencies responsible for large populations or coverage areas—may have a reasonable need to provide more than five employees with direct access to fulfill their public safety mandate. Thus, we propose to consider, on a case-by-case basis, an agency's request to increase their limit upon written request to the Commission specifying how many additional employees require access and providing specific reasons why their access is necessary. We propose to grant such requests upon an agency's reasonable showing of need. We seek comment on this approach. Would this approach provide such agencies with sufficient flexibility, or should we establish a different presumptive limit for federal agencies or state agencies with the largest populations or coverage areas? Should there be a different presumptive limit of employees for agencies that serve a coverage area or population above a certain size? If there should be a different presumptive limit, what presumptive limit and qualifying size would be appropriate to ensure the confidentiality of the information provided NORS and DIRS filings? Are there additional or alternative criteria that the Commission should use to evaluate requests?

57. We believe that multiple state and federal agencies often need to collaborate on issues such as disaster response, operating with jurisdictional boundaries that may not always be clearly demarcated under challenging and time-constrained circumstances. For this reason, we propose that the Commission review all reasonable requests from state and federal agencies, rather than proposing a presumptive limit on the number of participating state and federal agencies eligible for direct access to NORS and DIRS filings. Given the important and time sensitive work of these agencies, we seek to reduce the reliance of any one agency on another by allowing each to apply for direct access to NORS and DIRS filings. We seek comment on this proposal.

6. Training Requirements

58. We believe that our proposed sharing framework would be more effective, and the risk of over-disclosure of NORS and DIRS information minimized, if individuals who receive direct access to NORS and DIRS filings also receive training on their privileges and obligations under the program, particularly given that NORS and DIRS filings implicate both national security and commercial interests. We believe that an annual training requirement is justified both generally as an industry standard practice and because there are a number of important procedural details associated with our proposed safeguards that could be easily forgotten and overlooked with time in the absence of continued training.

59. For each participating agency, we propose that each individual to be granted a user account for direct access to NORS and DIRS filings be required to complete security training on the proper access to, use of, and compliance with safeguards to protect these filings. We propose that this training be completed by each individual prior to being granted initial access to NORS and DIRS filings and then on at least an annual basis thereafter.

60. Rather than mandate an agency's use of a specific program, we propose to allow agencies to develop their own training program or rely on an outside training program that covers, at a minimum, each of the following topics or ''program elements'': (i) Procedures and requirements for accessing NORS and DIRS filings; (ii) parameters by which agency employees may share confidential and aggregated NORS and DIRS information; (iii) initial and continuing requirements to receive trainings; (iv) notification that failure to abide by the required program elements will result in personal or agency termination of access to NORS and DIRS filings and liability to service providers and third-parties under applicable state and federal law; and (v) notification to the Commission, at its designated email address, concerning any questions, concerns, account management issues, reporting any known or reasonably suspected breach of protocol and, if needed, requesting service providers' contact information upon learning of a known or reasonably suspected breach. We seek comment on this proposal, including each of the elements.

61. The majority of commenters who opined on the issue of training believe that some form of training is necessary. For example, AT&T stated that the ''[C]omission should require states to train their authorized employees (annually) on proper handling of NORS information,'' and Sprint stated that ''[t]he Commission should require that personnel charged with obtaining the information be required to have security training, and the identity of these individuals should be supplied to the FCC.'' We acknowledge that a minority of commenters believe that training is not necessary. Contrary to the concerns expressed by some of these commenters, we are not proposing to require that any state or federal agency participate in the proposed sharing framework. Rather, participation by an agency would be entirely voluntary. Further, to the extent training costs are an issue for a participating agency, we propose to reduce the agency burden through the use of exemplar training programs.

62. To aid agencies' compliance with our training requirements, we propose that the Commission direct PSHSB to identify one or more exemplar training programs which would satisfy the required program elements. Once finalized, agencies could adopt these program(s) at their discretion in place of developing their own training program, thereby reducing their compliance time and costs. ATIS suggested that an exemplar-type training program could be developed (by its Network Reliability Steering Committee) in a matter of ''months'' once the Commission issues information sharing rules. We seek comment on the benefits and drawbacks to the Commission potentially working with one or more external partners, such as ATIS, to develop exemplar training programs(s).

63. We seek comment on whether the Commission should take steps to ensure that state and federal agencies' training programs comply with our proposed required program elements. Should the Commission require a third-party audit of a partner-developed training program? What specific steps should the Commission take, if any, to ensure the adequacy of such programs? We seek

comment on whether additional individuals, beyond those granted a user account for direct access to NORS and DIRS filings, should be subject to the proposed training requirements. Should anyone who receives confidential NORS and DIRS information, including downstream recipients, be required to complete formal training? Would such a requirement be practical or overly burdensome? If we impose such a requirement, what should the consequences be if that training is not provided?

F. Procedures for Requesting Direct Access to NORS and DIRS

64. We believe that our proposed information sharing framework would be more effective, and the risk of over-disclosure of NORS and DIRS information minimized, if we institute specific procedures for state and federal agencies to follow in applying for and managing their direct access to NORS and DIRS filings. We believe that these goals would also be furthered if we require that agency representatives provide a signed certification acknowledging their agreement to adhere to the key safeguards of our proposed framework.

65. We therefore propose to institute the following procedures for state and federal agencies to apply for and manage their direct access to NORS and DIRS filings. Eligible state and federal agencies must apply for direct access to NORS and DIRS filings by sending a request to the agency's designated email address. The request would include: (i) A signed statement from an agency official, on the agency's official letterhead, including the official's full contact information and formally requesting access to NORS and DIRS filings; (ii) a description of why the agency has a need to access NORS and DIRS filings and how it intends to use the information in practice; (iii) if applicable, a request to exceed the proposed presumptive limits on the number of individuals (*i.e.,* user accounts) permitted to access NORS and DIRS filings with an explanation of why this is necessary and (iv) a completed copy of a Certification Form, a template of which is provided in this item as Appendix C. On receipt, the Commission would review the request, follow-up with the agency official with any potential questions or issues. Once the Commission has reviewed the application and confirmed the application requirements are satisfied, the Commission would grant NORS and DIRS access to the agency by issuing the agency NORS and DIRS user accounts.

66. As described in detail at Appendix C, an agency official with authority to obligate and bind the agency must certify that the agency: Will treat NORS and DIRS filings and data as confidential under federal and state FOIA statutes and similar laws and regulations, implement a NORS and DIRS security training program, adhere to continuing requirements for access (including annual recertification), understands that the Commission does not guarantee the accuracy of NORS or DIRS filings and understands that there may be times access to the filings is unavailable. We believe that these requirements would create accountability within a state agency and help avoid the over-disclosure of sensitive NORS and DIRS information sharing framework. We seek comment on this approach and the details included in Appendix C. Is our requirement, set forth in Appendix C, that the Commission be notified if an agency's certifying official ceases to have authority to obligate and bind the agency to the provisions of Appendix C justified or would this requirement cause undue burden for an agency?

67. In addition, we propose to direct PSHSB to promulgate any additional procedural requirements that may be necessary to implement our proposals for the sharing of NORS and DIRS information, consistent with the Administrative Procedure Act. We foresee that such procedural requirements may include implementation of agency application processing procedures, necessary technical modifications to the NORS and DIRS databases (including, potentially, modifications designed to improve data protection and guard against unauthorized disclosure), and reporting guidelines to ensure that the Commission receives the notifications identified in Appendix C. We seek comment on these proposals, and whether there are additional safeguards we should adopt for the application process. Are there other procedural requirements that are anticipated to be necessary to implement our proposals?

G. Compliance Dates

68. We seek to give interested state and federal agencies ample time to prepare their certifications and to give service providers sufficient time to adjust their NORS and DIRS filing processes to conform with the any technical changes required by the proposed final rule changes. We also anticipate that the Commission will require time to implement the regime contemplated by our proposed rules in order to take such steps as securing OMB approval to the extent required under the Paperwork Reduction Act and modifying NORS and DIRS.

69. To that end, we propose to require revised outage reports be filed by a date specified in a Public Notice issued by the Public Safety and Homeland Security Bureau, announcing: (i) OMB has approved the revised information collections for DIRS and NORS, respectively, in accordance with the final order; and (ii) the Commission has made the necessary technical adjustments to the NORS and DIRS databases to facilitate sharing. The Commission would begin accepting certification forms and granting direct NORS and DIRS access to eligible state and federal agencies as of the specified date. This approach would permit the Bureau to account for the contingencies, *i.e.,* the readiness of the databases and the OMB approval that facilitates the implementation of the revised regime. We seek comment on this approach, as well as alternatives. Commenters proposing alternatives should explain the advantages and disadvantages of their preferred approaches.

IV. Procedural Matters

70. *Paperwork Reduction Act.* This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104 through 13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107 through 198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

71. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte*

presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

V. Initial Regulatory Flexibility Analysis

72. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Further Notice of Proposed Rule Making (*Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in ''Comment Period and Procedures'' of the *Further Notice.*

A. Need for, and Objectives of, the Proposed Rules

73. The *Further Notice* seeks additional comment on various proposals first issued in a Notice of Proposed Rulemaking in PS Docket No. 15–80, adopted in 2015, and a Report and Order and Further Notice of Proposed Rulemaking in PS Docket Nos. 15–80 and 11–82, adopted in 2016, to update the Commission's part 4 outage reporting rules. More specifically, in the *Further Notice* the Commission proposes an information sharing framework to ensure that state and federal government agencies have access to communications network information to aid these agencies' response, recovery and restoration efforts and allow them to direct their resources quickly, and to the areas of greatest need.

74. The proposals in the *Further Notice* to grant participating agencies of the states, the District of Columbia, Tribal Nations, territories, and the federal government (we note that the NCCIC of DHS already has direct access to NORS and DIRS information; we do not propose to modify the terms by which the NCCIC accesses this information), hereinafter agencies, direct access to outage and infrastructure status information establish safeguards to protect the confidentiality of Network Outage Reporting System (NORS) and Disaster Information Reporting System (DIRS) filings. The Commission's proposals define the scope of eligible government entities that would be able to participate and propose confidentiality protections that include requiring that NORS and DIRS data be treated as presumptively confidential. The proposals consider providing read-only access, limiting access based on agency jurisdiction, limiting the number of employees with access at each agency, requiring training requirements for employees with access, and specifying procedures for the sharing of confidential NORS and DIRS information. The proposed rules also include access request and certifications procedures for agencies to apply for and manage their direct access NORS and DIRS filings.

75. The *Further Notice* seeks further comment on a number of the implementation details for proposed agencies' direct access to NORS and DIRS filings. To establish appropriate safeguards, the *Further Notice* specifically seeks comment on:

- Providing agencies with read-only access to NORS and DIRS filings to reduce the potential for unauthorized modifications;
- Presumptively limiting the number of identified and trained personnel that have direct access to NORS and DIRS filings by limiting the number of user accounts to five per agency;
- Requiring agencies to treat NORS and DIRS filings and data as confidential under federal and state FOIA statutes and similar laws and regulations;
- Requiring each individual granted a user account for direct access to NORS and DIRS filings complete security training on the proper access to, use of, and compliance with safeguards to protect the information contained in the filings;
- Limiting agency access to NORS and DIRS filings for events reported to occur at least partially within their jurisdictional or geographic boundaries;
- Allowing participating agencies to share confidential NORS and DIRS information inside or outside the agency if a recipient reasonably requires access to the confidential NORS and DIRS information to prepare for, or respond to, an event that threatens public safety, pursuant to the recipient's official duties;
- Allowing participating agencies to share information from the NORS and DIRS filings of at least four service providers that has been aggregated and anonymized to avoid identifying any service provider by name or in substance with any entity, including the broader public; and
- Requiring agencies to provide certain assurances and suitable attestation that they will take measures to protect NORS and DIRS filings from unauthorized access.

B. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

76. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' the same as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *See* 15 U.S.C. 632. Below is a list of such entities.

- Interconnected VoIP services;
- Wireline Providers;
- Wireless Providers—Fixed and Mobile;
- Satellite Service Providers; and
- Cable Service Providers.

C. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

77. We expect the proposed rules in the *Further Notice* will impose new or additional reporting or recordkeeping and/or other compliance obligations on service providers, and if they choose to participate, on agencies that are granted direct access to NORS and DIRS filings,

and these entities may have to hire professionals to fulfill their compliance obligations. The rules proposed in the *Further Notice* would require minor adjustments to the existing reporting process used by service providers to account for new or refined multistate reporting for the NORS and DIRS filings. We estimate that service providers will incur total initial set up costs of $3.2 million based on our estimate of 1,000 service provider incurring costs of $80 per hour and spending 40 hours to implement update or revise their software used to report outages to the Commission in NORS and DIRS. We seek comment on costs to service providers associated with any updates or modifications to their automated software and other systems that would be required for them to continue to file NORS reports under our proposed information sharing framework.

78. Pursuant to the proposed confidential protections, if adopted, voluntarily participating agencies will be required to notify the Commission when they receive requests for NORS filings, DIRS filings, or related records and prior to the effective date of any change in relevant statutes of laws that would affect the agency's ability to adhere to the confidentiality protections that the Commission requires. We believe these agencies would incur initial costs to review and revise their confidentiality protections in accordance with the proposed information sharing framework and minimal reoccurring costs to notify the Commission about a request for NORS/DIRS filings or relevant statutory changes as described above. The Commission cannot quantify the costs for these activities, which would vary based on each participating agency's particular circumstances, however, we tentatively conclude that the benefits of participation would exceed the costs for any participating agency and seek comment on these matters.

79. Under the proposed information sharing framework, voluntarily participating agencies will be required to submit to the Commission requests for direct access to NORS and DIRS filings which includes a description of why the agency has a need to access NORS and DIRS filings and how it intends to use the information in practice. These agencies will also be required to administer annual security training to each person granted a user account for NORS and DIRS filings. In the event of any known or reasonably suspected breach of protocol involving NORS and DIRS filings participating agencies will be required to report this information to the Commission and all affected providers within 24 hours of the breach or suspected breach. The Commission believes these participating agencies will incur costs to comply with the above requirements, however, we cannot quantify the costs for these activities, which would vary based on each participating agency's particular circumstances, however, we tentatively conclude that the benefits of participation would exceed the costs for any participating agency and seek comment on these matters.

80. In the *Further Notice,* the Commission proposes to allow participating agencies to share confidential NORS and DIRS information within and outside the agency subject to certain limitations. A participating agency would likely incur initial costs to determine how to appropriately handle and disseminate confidential NORS and DIRS information consistent with the proposed information sharing framework. The *Further Notice* also proposes to require participating agencies to execute an annual attestation form certifying and acknowledging compliance with requirements of the information sharing framework that the Commission adopts. These agencies will undoubtably incur costs to comply these new requirements if adopted, but the Commission cannot quantify the costs for these activities, which would vary based on each participating agency's particular circumstances and therefore seeks comment on the matters.

D. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

81. None.

VI. Legal Basis

82. Authority for the actions proposed in this Second Further Notice of Proposed Rulemaking may be found in sections 1, 4(i), 4(j), 4(o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, 47 U.S.C. 151, 154(i) through (j) & (o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, 615c, and 1302.

List of Subjects in 47 CFR Part 4

Airports, Communications common carriers, Communications equipment, Disruptions to communications, Network outages, Reporting and recordkeeping requirements, Telecommunications, Federal Communications Commission.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to be amend 47 CFR part 4 as follows:

47 CFR PART 4 [AMENDED]

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

Authority: 47 U.S.C. 151, 154(i) through (j) & (o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, 615c, 1302, unless otherwise noted.

■ 2. Section 4.2 is revised to read as follows:

§ 4.2 Availability of reports filed under this part.

Reports filed under this part will be presumed to be confidential, except that the Chief of the Public Safety and Homeland Security Bureau may grant agencies of the states, the District of Columbia, Tribal Nations, territories and federal governments access to portions of the information collections affecting their respective jurisdictions only after each requesting agency has certified to the Commission that it has protections in place to safeguard and limit disclosure of confidential information to third parties as described in the Commission's Certification Form. Public access to reports filed under this part may be sought only pursuant to the procedures set forth in 47 CFR 0.461. Notice of any requests for public inspection of outage reports will be provided pursuant to 47 CFR 0.461(d)(3).

[FR Doc. 2020–06085 Filed 3–30–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 10, 11, 12, and 39

[FAR Case 2017–011; Docket No. FAR–2017–0011, Sequence No. 1]

RIN 9000–AN46

Federal Acquisition Regulation: Section 508–Based Standards in Information and Communication Technology

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to incorporate recent revisions and updates to accessibility standards issued by the U.S. Access Board pursuant to section 508 of the Rehabilitation Act of 1973.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before June 1, 2020 to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2017–011 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2017–011''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2017–011.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''FAR Case 2017–011'' on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW, 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite ''FAR case 2017–011 (proposed rule)'' in all correspondence related to this case. All comments received 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: Ms. Camara Francis, Procurement Analyst, at 202–550–0935 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAR Case 2017–011.

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, Congress amended section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), to strengthen requirements for accessibility to electronic and information technology (now generally referred to as ''information and communication technology'' or ''ICT'') provided by the Federal Government. Among other things, section 508 mandates that Federal agencies ''develop, procure, maintain, or use'' ICT in a manner that ensures that Federal employees with disabilities have comparable access to, and use of, such information and data relative to other Federal employees. Section 508 also requires Federal agencies to ensure that members of the public with disabilities have comparable access to publicly available information and data.

The Access Board, also known as the Architectural and Transportation Barriers Compliance Board, is tasked with issuing accessibility standards for ICT covered under section 508, and updating these standards periodically to reflect technological changes. The Federal Acquisition Regulatory Council, in turn, is required to revise the FAR to incorporate the Access Board's accessibility standards or any amendments thereto.

In December 2000, the Access Board published its initial set of accessibility standards at 65 FR 80500, (December 21, 2000). Thereafter, a final FAR rule was published incorporating the Access Board's accessibility standards at 66 FR 20894 (April 25, 2001).

The Access Board completed a multiyear effort to ''refresh'' its initial, existing set of accessibility standards under section 508 to address advances in ICT, harmonize with accessibility standards developed by standards organizations worldwide, and ensure consistency with the Access Board's regulations that had been promulgated since the late 1990s. The revised section 508 Accessibility Standards support the access needs of individuals with disabilities, while also considering the costs of providing accessible ICT to Federal agencies.

The Access Board's final rule was published in the **Federal Register** at 82 FR 5790 on January 18, 2017. This proposed rule updates the FAR to ensure that the updated standards are appropriately considered in Federal ICT acquisitions. The proposed rule includes a ''safe harbor'' provision for existing (*i.e.,* legacy) ICT, which considers legacy ICT in existence on or before January 18, 2018, to be compliant if it meets the earlier standard issued pursuant to section 508 of the Rehabilitation Act of 1973 (See E202.2 of Revised Standards) and the legacy ICT is not altered after January 18, 2018. In other words, such ''untouched'' ICT need not be modified or upgraded to conform to the revised 508 standards as long as it already conforms to the original 508 standards. However, ICT acquired on or before January 18, 2018, will need to be upgraded or modified to conform to the new standard if such ICT is altered after January 18, 2018, or does not comply with the original 508 standards. In addition, ICT acquired after January 18, 2018, must be upgraded or modified to conform to the new standard. Such direction will be included in requirements documents issued by the agency.

II. Discussion and Analysis

The proposed rule provides for the following:

(1) At FAR 2.101, the definition for ''Electronic and information technology (EIT)'' is removed and replaced with the definition of ''Information and communication technology (ICT)''.

(2) At FAR 7.103, ''EIT'' is removed and replaced with ''ICT'', the standard citation is updated, the term ''service requirement'' is added along with examples, and the unnecessary reference to 11.002(e) is removed.

(3) At FAR 7.105, language is added to require that the applicable accessibility standards be identified in the acquisition plan and provide the applicability, exception or exemption of the standards to the acquisition.

(4) At FAR 10.001, EIT is removed and replaced with ICT, and the name of the Architectural and Transportation Barriers Compliance Board is removed, and the citation is updated.

(5) At FAR 11.002, the text is revised to guide the contracting officer rather than requiring activities, and to more clearly identify the ICT information that is required in the requirements documents.

(6) At FAR 12.202, EIT is removed and replaced with ICT, and the standards citation is updated. The obligations for requirements documents are revised from ''must comply with'' to

''shall identify'' the applicable information and communication technology accessibility standards.

(7) At FAR 39.000, the term ''electronic and information technology'' is revised to ''information and communication technology.''

(8) At FAR 39.001, the section is restructured to add a new paragraph (b) to clarify the scope of the applicability of part 39.

(9) At FAR 39.101, the term ''accommodations'' is removed and replaced with ''accessibility,'' to more closely align the FAR with the terminology in 36 CFR 1194.1.

(10) At FAR 39.201, the name ''Architectural and Transportation Barriers Compliance Board'' is replaced with the ''U.S. Access Board,'' and ''EIT'' is removed and replaced with ''ICT.''

(11) At FAR 39.203, paragraph headings are added for easier navigation through the subject matter.

(i) In paragraph (a), ''EIT'' is replaced with ''ICT.''

(ii) Paragraph (b) clarifies that an exception or a determination of an exemption is not required prior to the award of an indefinite-quantity contract, except for requirements that are to be satisfied by initial award.

(iii) In paragraph (c) (formerly paragraph (b)(3)), new language has been added to clarify that requiring and ordering activities shall document an exception or an exemption to the accessibility standards, if applicable, at the time of order issuance.

(iv) In paragraph (d) (formerly paragraph (c)(1), the requirement that commercial items must be available in time to meet the agency's delivery requirements is modified to state that the items must best meet the agency's needs.

(v) Paragraph (e) is new. It sets forth the requirements for legacy ICT, *i.e.,* any component or portion of existing ICT that was procured, maintained, or used on or before January 18, 2018.

(vi) Paragraph (f) is also new. It addresses the requirements for alterations of legacy ICT after January 18, 2018.

(12) At FAR 39.204, obsolete language in paragraph (a) is removed. The new paragraph (a) has been restructured to clarify that the accessibility standards for ICT do not apply to acquisitions that fall under one of the three exception categories: (1) National security systems; (2) incidental contract items; and (3) maintenance or monitoring spaces. New language has been added as paragraph (b) which requires the contracting officer to receive written confirmation from the requiring activity of the exception. Current paragraph (e) regarding undue burden is moved to the new section 39.205 which covers exemptions.

(13) FAR 39.205 is a new section that is added to address exemptions. Paragraph (a)(1) addresses undue burden which was moved from 39.204(e). Paragraph (a)(2) provides an exemption for agencies to acquire ICT that conforms only to the extent that conformance with the accessibility standards in 36 CFR 1194.1 will not result in a fundamental alteration in the nature of the ICT. Paragraph (a)(3) addresses an exemption when there are no commercial items that fully conform to the ICT accessibility standards in 36 CFR 1194.1. Paragraph (b) requires an agency to provide individuals with disabilities access to and use of information and data by an alternative means when using an exemption. *Paragraph (c) addresses the documentation requirements for using an exemption.*

III. Expected Impact of the Proposed Rule and Proposed Cost Savings

DoD, GSA, and NASA did not perform their own regulatory cost analysis on this proposed rule because the Final Regulatory Impact Analysis (FRIA), dated January 5, 2017, which accompanied the U.S. Access Board's Final ICT Rule, provides an adequate economic assessment of both the Board's rule and this proposed rule. Therefore, the calculated compliance costs of $79.0 million over a 10-year timeframe is attributable to the U.S. Access Board's Final ICT Rule.

The Access Board's FRIA estimates that, under the expected cost scenario, incremental compliance costs to Federal agencies for procured ICT under the revised 508 Accessibility Standards over a 10-year timeframe will be $79.0 million per year using a 7% discount rate, and $82.8 million per year using a 3% discount rate. These costs will largely be incurred from compliance with the revised 508 Accessibility Standards for procured ICT products and services.

With respect to monetized benefits attributable to procured ICT, the Access Board's FRIA estimates that, under the expected scenario, benefits for procured ICT (and, hence, this proposed rule) are likely to have an annualized value of $33.1 million over a 10-year timeframe using a 7% discount rate, and $35.2 million using a 3% discount rate. These benefits would accrue to Federal agencies as a result from productivity increases by Federal employees and time saved from reduced phone calls to Federal agencies. Additionally, persons with disabilities using public-facing Federal information and data (*e.g.,* Federal websites) would experience improved access and time savings. There are also substantial unquantifiable benefits. For example, enhanced ICT accessibility for persons with disabilities can be expected to improve independent living, increase civic engagement, decrease stigma, promote equality, and enhance integration into American society. Updating the FAR to incorporate the revised 508 Accessibility Standards is also expected to provide benefits to ICT firms that could not be monetized. For example, harmonization with national and international consensus standards is likely to assist American ICT companies by helping to achieve economies of scale created by wider use of these technical standards.

To access the U.S. Access Board's FRIA, go to the Access Board's website (*https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-regulatory-impact-analysis*), or the electronic docket for the Access Board's Final ICT rule at the Federal eRulemaking Portal (*https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh/final-regulatory-impact-analysis*).

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not add or modify any provisions or clauses. This rule proposes to amend FAR part 39, Acquisition of Information Technology, and other references to Government requirements for information and communication technology. The objective of the rule is to update the FAR text to align with the accessibility standards revisions made by the Access Board at 36 CFR 1194.1. The accessibility standards are currently applicable to all information and communication technology acquisitions. As such, determinations and findings under 41 U.S.C. 1905 to 1907 regarding the applicability of this rule to acquisitions at or below the SAT or to acquisitions for commercial and COTS items are not required.

The FAR rule will continue the existing applicability of Section-508 requirements, when acquiring ICT through contracts at or below the SAT, or contracts for the acquisition of commercial items, including COTS items.

V. Executive Orders 12866 and 13563

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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a ''significant regulatory action'' under the terms of E.O. 12866 (58 FR 51735, October 4, 1993) and is therefore subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011). This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This proposed rule, if finalized as proposed, is expected to be an E.O. 13771 regulatory action.

VII. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

This proposed rule amends the FAR to incorporate recent revisions and updates to the accessibility standards issued by the U.S. Access Board pursuant to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d). Section 508 generally mandates that Federal agencies develop, procure, maintain, and use information and communication technology (ICT) in a manner that ensures Federal employees and members of the public with disabilities have comparable access to, and use of, such information and data. The U.S. Access Board periodically reviews and revises these accessibility standards to reflect technological advances and other changes to ICT that occur over the passage of time.

The objective of this proposed rule is to revise the FAR to improve the accessibility of ICT developed, procured, maintained, or used by the Federal Government. Improved accessibility reduces barriers to employment in the Federal Government for individuals with disabilities and reduces the probability that Federal employees with disabilities will be underemployed. The revised 508 accessibility standards may also benefit people outside the Federal workforce, since the accessible technology from the Federal Government may spill over to the rest of society. The legal basis for this rule is section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

Based on fiscal year 2018 data from the Federal Procurement Data System (FPDS), it is estimated that there are approximately 22,809 contractors that manufacture, sell, or lease ICT supplies or services required to comply with section 508 standards. Approximately 12,845 of these contractors are small businesses. Although, the section 508 standards are not new, small businesses will have to analyze whether the information and communication technology they or their resellers plan to sell to the Federal Government complies with the revised 508 accessibility standards. Manufacturers may want to redesign their supplies and services to make them fully compliant, to have a better chance for their items to be purchased by the Government. The proposed rule may decrease demand for some supplies and services that are not fully compliant, potentially leading to decreased sales for small entities manufacturing or selling those items. Conversely, the proposed rule may increase demand for some supplies and services that are fully compliant and meet agency's business needs, potentially leading to increased sales for small businesses manufacturing or selling those items. To meet the requirements of the law, small businesses cannot be exempt from any part of the rule.

There are no projected reporting or recordkeeping requirements. There is a compliance requirement; entities will need to familiarize themselves with the differences between the 2000 and 2017 standards in order to assess the impact on procurements and comply with the revised functional performance criteria and technical accessibility standards beyond those currently mandated in FAR subpart 39.2.

Although the U.S. Access Board did not provide an analysis in their final rule of the impact of the regulatory action on small entities because the revised 508 standards directly regulate only Federal entities, DoD, GSA, and NASA included compliance burden for large and small entities. It was estimated that approximately 12,845 small businesses would be subject to the requirement.

There are no known significant alternatives to the rule for effective implementation of this statutory requirement. Since the statute imposes private enforcement, where individuals with disabilities can file civil rights lawsuits, the Government has little flexibility in promulgating alternatives to the Access Board's standards. The impact of this rule may be significant for small entities that are not currently in compliance with existing standards.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2017–011) in correspondence.

VIII. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 2, 7, 10, 11, 12, and 39

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 7, 10, 11, 12, and 39 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 7, 10, 11, 12, and 39 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, in paragraph (b) by—

■ a. Removing the definition ''Electronic and information technology (EIT)''; and

■ b. Adding in alphabetical order the definition ''Information and communication technology (ICT)'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Information and communication technology (ICT) means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include, but are not limited to: Computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; website; videos; and electronic documents.

* * * * *

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.103 by revising paragraph (q) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(q) Ensuring that acquisition planners specify needs and develop plans, drawings, work statements, specifications, or other product or service requirements (*e.g.,* help desks, call centers, training services, and automated self-service technical support) descriptions that address information and communication technology (ICT) accessibility standards (see 36 CFR 1194.1) in proposed acquisitions and that these standards are included in requirements planning (see subpart 39.2).

* * * * *

■ 4. In section 7.105, amend paragraph (b) by redesignating paragraph (b)(5)(iv) as paragraph (b)(5)(v) and adding a new paragraph (b)(5)(iv) to read as follows.

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(iv) For acquisitions to which the ICT accessibility standards will apply, identify the applicable standard(s) and whether an exception or an exemption to the standard(s) applies (see subpart 39.2 and 36 CFR 1194.1).

* * * * *

PART 10—MARKET RESEARCH

■ 5. Amend section 10.001 by revising paragraph (a)(3)(viii) to read as follows:

10.001 Policy.

(a) * * *

(3) * * *

(viii) Assess the availability of supplies or services that meet all or part of the applicable information and communication technology accessibility standards at 36 CFR 1194.1 (see subpart 39.2).

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 6. Amend section 11.002 by revising paragraph (f) to read as follows:

11.002 Policy.

* * * * *

(f) In accordance with section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), the contracting officer shall obtain from the requiring activity the requirement documents, which must identify—

(1) The needs of current and future users with disabilities to determine how—

(i) Users with disabilities will perform the functions supported by the information and communication technology (ICT); and

(ii) The ICT will be developed, installed, configured and maintained to support users with disabilities;

(2) The applicable information and communication technology accessibility standards (see subpart 39.2); and

(3) Any information and communication technology accessibility standards that cannot be met due to an exception or an exemption for any component or portion of the product (see subpart 39.2).

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 7. Amend section 12.202 by revising paragraph (d) to read as follows:

12.202 Market research and description of agency need.

* * * * *

(d) Requirements documents shall identify the applicable information and communication technology accessibility standards at 36 CFR 1194.1 (see 11.002(f) and subpart 39.2).

* * * * *

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 8. Amend section 39.000 by revising paragraph (b) to read as follows:

39.000 Scope of part.

* * * * *

(b) Information and communication technology (see 2.101(b)).

■ 9. Revise section 39.001 to read as follows:

39.001 Applicability.

This part applies to the acquisition of—

(a) Information technology by or for the use of agencies except for acquisitions of information technology for national security systems. However, acquisitions of information technology for national security systems shall be conducted in accordance with 40 U.S.C. 11302 with regard to requirements for performance and results-based management; the role of the agency Chief Information Officer in acquisitions; and accountability. These requirements are addressed in OMB Circular No. A–130; and

(b) Information and communication technology by or for the use of agencies or for the use of the public, unless an exception (see 39.204) or an exemption (see 39.205) applies. See 36 CFR 1194.1.

39.101 [Amended]

■ 10. Amend section 39.101 by removing from paragraph (a)(1)(i) ''accommodations'' and adding ''accessibility'' in its place.

■ 11. Revise subpart 39.2 heading to read as follows:

Subpart 39.2—Information and Communication Technology

* * * * *

■ 12. Amend section 39.201 by revising paragraph (a), and removing from paragraph (c) ''EIT'' and adding ''ICT'' in its place to read as follows:

39.201 Scope of subpart.

(a) This subpart implements section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), and incorporates the U.S. Access Board's information and communication technology (ICT) accessibility standards at 36 CFR 1194.1.

* * * * *

■ 13. Revise sections 39.203 and 39.204, and add section 39.205 to read as follows:

39.203 Applicability.

(a) *General.* Unless an exception at 39.204 or an exemption at 39.205 applies, acquisitions for ICT supplies and services shall meet the applicable ICT accessibility standards at 36 CFR 1194.1.

(b) *Indefinite-quantity contracts.* Confirmation of an exception or a determination of an exemption is not required prior to award of an indefinite-quantity contract, except for requirements that are to be satisfied by initial award. The contract must identify which supplies and services the contractor indicates as compliant, and show where full details of compliance can be found (*e.g.,* vendor's or other exact website location).

(c) *Task or delivery order.* At the time of issuance of a task or delivery order against an indefinite-quantity contract, the requiring and ordering activity shall ensure compliance with the ICT accessibility standards and document an exception or exemption if applicable. Any task or delivery order, or portion thereof, issued for a noncompliant ICT item shall be supported by the appropriate exception or exemption.

(d) *Commercial items.* When acquiring commercial items, an agency must comply with those ICT accessibility standards that can be met with supplies or services that are available in the commercial marketplace and that best address the agency's needs, but see 39.205(a)(3).

(e) *Legacy ICT.* Any component or portion of existing ICT (*i.e.* ICT that was procured, maintained, or used on or before January 18, 2018) is not required to comply with the current ICT accessibility standards if it—

(1) Complies with an earlier standard issued pursuant to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), which is set forth in Appendix D to 36 CFR 1194.1); and

(2) Has not been altered (*i.e.,* a change that affects interoperability, the user interface, or access to information or data) after January 18, 2018.

(f) *Alterations of legacy ICT.* When altering any component or portion of existing ICT, after January 18, 2018, the component or portion must be modified to conform to the current ICT accessibility standards in 36 CFR 1194.1.

39.204 Exceptions.

(a) The requirements in 39.203 do not apply to acquisitions for—

(1) *National security systems.* ICT operated by agencies as part of a national security system, as defined by 40 U.S.C. 11103(a);

(2) *Incidental contract items.* ICT acquired by a contractor incidental to a contract, *i.e.,* for in-house use by the contractor to perform the contract; or

(3) *Maintenance or monitoring spaces.* Status indicators and operable parts for ICT functions that are located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment.

(b) The contracting officer shall receive, as a part of the requirements documentation, written confirmation from the requiring activity that an exception, in accordance with paragraphs (a)(1), (2), or (3) of this section applies to the ICT supply or service. This documentation shall be maintained in the contract file.

39.205 Exemptions.

(a) An agency may grant an exemption for the following:

(1) *Undue burden.* When an agency determines the acquisition of ICT conforming with all the applicable ICT accessibility standards would impose an undue burden on the agency, compliance with the ICT accessibility standards is only required to the extent that it would not impose an undue burden. In determining whether conformance to one or more ICT accessibility standards would impose an undue burden, an agency shall consider the extent to which conformance would impose significant difficulty or expense considering the agency resources available to the program or component for which the ICT supply or service is being procured.

(2) *Fundamental alteration.* When an agency determines that acquisition of ICT that conforms with all applicable ICT accessibility standards would result in a fundamental alteration in the nature of the ICT, such acquisition is required to conform only to the extent that conformance will not result in a fundamental alteration in the nature of the ICT.

(3) *Nonavailability of conforming commercial items.* Where there are no commercial items that fully conform to the ICT accessibility standards, the agency shall procure the supplies or service available in the commercial marketplace that best meets the ICT accessibility standards consistent with the agency's needs.

(b) *Alternative means of access.* An agency shall provide individuals with disabilities access to and use of information and data by an alternative means to meet the identified needs when an exemption in paragraphs (a)(1), (2), or (3) of this section applies.

(c) *Documentation.* When an exemption applies, the contracting officer shall obtain, as part of the requirements documentation, a written determination from the requiring activity explaining the basis for the exemption in paragraphs (a)(1), (2) or (3) of this section. This documentation shall be maintained in the contract file.

(1) *Undue burden.* A determination of undue burden shall address why and to what extent compliance with applicable ICT accessibility standards constitutes an undue burden.

(2) *Fundamental alteration.* A determination of fundamental alteration shall address the extent to which compliance with the applicable ICT accessibility standards would result in a fundamental alteration in the nature of the ICT.

(3) *Nonavailability of conforming commercial items.* A determination of commercial items nonavailability shall include—

(i) A description of the market research performed;

(ii) A listing of the requirements that cannot be met; and

(iii) The rationale for determining that the ICT to be procured best meets the ICT accessibility standards in 36 CFR 1194.1, consistent with the agency's needs.

[FR Doc. 2020–05867 Filed 3–30–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 273

[Docket No. FRA–2019–0069]

RIN 2130–AC85

Metrics and Minimum Standards for Intercity Passenger Rail Service

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations. Consistent with the statutory mandate, FRA and Amtrak jointly developed the proposed metrics and minimum standards.

DATES: Written comments on this proposed rule must be received on or before June 1, 2020. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. FRA intends to hold a public hearing to allow interested parties the opportunity to comment on specific issues addressed in the NPRM. The date and location of the hearing will be set forth in a forthcoming notice in the **Federal Register**.

ADDRESSES: You may submit comments identified by the docket number FRA–2019–0069 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments;
- *Mail:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; or
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, 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.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2130–AC85). Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Kristin Ferriter, Transportation Industry Analyst, Office of Railroad Policy and Development, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone (202) 493–0197); or Zeb Schorr, Assistant Chief Counsel, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone (202) 493–6072).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

On October 16, 2008, President George W. Bush signed the Passenger Rail Investment and Improvement Act of 2008, Public Law 110–432, 122 Stat. 4907 (PRIIA) into law. Section 207 of PRIIA requires FRA and Amtrak jointly to develop new or improved metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations (the Metrics and Standards).

In compliance with the statutory directive, FRA and Amtrak jointly developed the Metrics and Standards proposed here. The Metrics and Standards are generally organized into four categories: On-time performance and train delays, customer service, financial, and public benefits.

II. Background

A. PRIIA

Section 207 of PRIIA requires FRA and Amtrak to act jointly, in consultation with the Surface Transportation Board (STB), rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, and groups representing Amtrak passengers, as appropriate, to develop new or improved metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, including cost recovery, on-time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services.

Section 207 further provides that the metrics, at a minimum, must include: The percentage of avoidable and fully allocated operating costs covered by passenger revenues on each route; ridership per train mile operated; measures of on-time performance and delays incurred by intercity passenger trains on the rail lines of each rail carrier; and, for long-distance routes, measures of connectivity with other routes in all regions currently receiving Amtrak service and the transportation needs of communities and populations that are not well-served by other forms of intercity transportation.

Section 207 also provides that the Federal Railroad Administrator must collect the necessary data and publish a quarterly report on the performance and service quality of intercity passenger train operations, including Amtrak's cost recovery, ridership, on-time performance and minutes of delay, causes of delay, on-board services, stations, facilities, equipment, and other services.

Finally, Section 207 provides that, to the extent practicable, Amtrak and its host rail carriers shall incorporate the Metrics and Standards into their access and service agreements.

The Metrics and Standards also relate to Section 213 of PRIIA. Section 213 states that if the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under Section 207 fails to meet those standards for 2 consecutive calendar quarters, STB may initiate an investigation. STB shall also initiate such an investigation upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service. Section 213 further describes the STB investigation and STB's related authority to identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train and to award damages and prescribe other relief.

B. 2010 Metrics and Standards

In March 2009, FRA published proposed Metrics and Standards, which were jointly developed with Amtrak. After receiving and considering comments, FRA published final Metrics and Standards in May 2010. However, the 2010 Metrics and Standards were subject to a legal challenge on the basis that Section 207 of PRIIA was unconstitutional. After protracted litigation, the United States Court of Appeals for the District of Columbia Circuit found that paragraph (d) of Section 207 was unconstitutional, and this holding had the effect of voiding in part the 2010 Metrics and Standards. Following additional litigation, that Court also found that paragraphs (a) through (c) of Section 207 were constitutional and remained in effect (this decision became final on June 3, 2019). As a result, in July 2019, FRA and Amtrak once again began the process of developing joint Metrics and Standards as required by Section 207(a).

For reference, FRA will place a copy of the 2010 Metrics and Standards in the docket for this rulemaking (FRA–2019–0069). The 2010 Metrics and Standards were organized into five categories—financial, on-time performance, train delays, other service quality, and public benefits—and set forth multiple on-time performance and train delays standards. FRA received comments on each of these categories, with on-time performance and train delays receiving the most attention.

The 2010 Metrics and Standards differ from the Metrics and Standards proposed in this rulemaking in several ways, including the following:

(1) The 2010 Metrics and Standards set forth 3 on-time performance metrics and standards—effective speed, endpoint, and all-stations;

(2) the 2010 Metrics and Standards set forth standards in connection with the train delays metrics (*e.g.,* 900 minutes per 10,000 train-miles for host-responsible train delays);

(3) the 2010 Metrics and Standards set forth standards in connection with many of the service quality metrics (*e.g.,* 90 percent by 2014) and set forth metrics regarding equipment reliability and customer comments received;

(4) the 2010 Metrics and Standards set forth standards in connection with the financial metrics (*e.g.,* continuous year-over-year improvement) and set forth financial metrics regarding adjusted loss per passenger-mile and long-term avoidable operating loss per passenger mile; and

(5) the 2010 Metrics and Standards did not include metrics regarding missed connections, service availability, average minutes late per late customer, and cost recovery.

This NPRM sets forth a single on-time performance standard (customer on-time performance). FRA believes this single standard is the most effective manner to achieve dedicated focus on improving on-time performance. FRA invites comments on whether any metrics or standards included in the 2010 Metrics and Standards should be included.

C. Stakeholder Consultation

Consistent with Section 207(a), FRA and Amtrak consulted with many stakeholders to develop the Metrics and Standards proposed in this NPRM.

Specifically, in August and September, 2019, FRA met separately with representatives of the following Class I railroads that host Amtrak trains: BNSF Railway, Canadian National Railway, Canadian Pacific Railway, CSX Transportation, Norfolk Southern Railway Company, and Union Pacific Railroad. On September 5, 2019, FRA and Amtrak met with representatives of the Rail Passengers Association. On September 10, 2019, FRA and Amtrak met with representatives of the Metro-North Railroad. On September 12, 2019, FRA and Amtrak met with representatives of the Transport Workers Union. On September 13, 2019, FRA and Amtrak met with Surface Transportation Board staff. On September 18, 2019, FRA and Amtrak convened a meeting with members of the State-Amtrak Intercity Passenger Rail Committee, whose members include: Caltrans, Capitol Corridor Joint Powers Authority, Connecticut Department of Transportation (DOT), Illinois DOT, Los Angeles-San Diego-San Luis Obispo Joint Powers Authority, Massachusetts DOT, Michigan DOT, Missouri DOT, New York State DOT, North Carolina DOT, Northern New England Passenger Rail Authority, Oklahoma DOT, Oregon DOT, Pennsylvania DOT, San Joaquin Joint Powers Authority, Texas DOT, Vermont Agency of Transportation, Virginia Department of Rail and Public Transportation, Washington State DOT, and Wisconsin DOT. On September 20, 2019, Amtrak met separately with representatives of the Union Pacific Railroad. On September 24, 2019, FRA and Amtrak met with representatives of the Vermont Railway. On November 15, 2019, Amtrak met separately with representatives of the BNSF Railway. On November 19, 2019, in two different meetings, FRA met separately with, first, representatives of the International Association of Sheet Metal, Air, Rail, and Transportation Workers, Transportation Division, and, second, with members of the Surface Transportation Board. FRA and Amtrak also sought input from other potentially interested entities who did not express interest in consulting at that time.

D. FRA and Amtrak Joint Development

In compliance with Section 207 of PRIIA, FRA and Amtrak jointly developed the Metrics and Standards proposed in this NPRM, in consultation with the stakeholders described in subsection (C) above.

E. FRA Quarterly Reporting

Section 207(b) requires FRA to publish a quarterly report on the performance and service quality of intercity passenger train operations, including Amtrak's cost recovery, ridership, on-time performance and minutes of delay, causes of delay, on-board services, stations, facilities, equipment, and other services. FRA's first quarterly report would be issued after the first full calendar quarter 3 months after the date of publication of the final rule in the **Federal Register**. For example, if the final rule was published on July 10, 2020, 3 months after that date would be October 10, 2020, and the first full calendar quarter after that would run from January 1, 2021 to March 31, 2021.

III. Customer On-Time Performance

This NPRM proposes to measure the on-time performance (OTP) element of intercity passenger train performance using the customer OTP metric, defined as the percentage of all customers on an intercity passenger rail train who arrive at their detraining point within 15 minutes of their published scheduled arrival time, reported by train and by route. The customer OTP metric focuses on intercity passenger train performance as experienced by the customer. Customer OTP measures the on-time arrival of every intercity passenger customer, including those who detrain at intermediate stops along a route and those who ride the entire route.

FRA recognizes that the proposed customer OTP metric should be accompanied by metrics that provide additional useful information about a train's performance. There are factors that could contribute to poor OTP on a route that are not evident from measuring station arrival times alone. For example, an intercity passenger rail train dispatched by multiple hosts may experience delays on one host railroad but not on another host railroad. Since the customer OTP metric does not easily distinguish performance on individual host railroads (including Amtrak), this NPRM also proposes metrics to measure the degree of customer lateness and train delays to provide more information about the customer experience and train performance on an individual host railroad.[1]

The customer OTP metric would be calculated as follows: The total number of customers on an intercity passenger rail train who arrive at their detraining point within 15 minutes of their published scheduled arrival time divided by the total number of customers on such intercity passenger rail train.[2] For example:

[1] To the customer, there may be no discernable difference as to whether they are in one host railroad's territory or another's while traveling on a route. However, most intercity passenger rail routes involve interchanges between one or more host railroads. Thus, as stated, FRA proposes metrics that measure both route-level performance that reflect the customer experience, as well as metrics that more directly relate to the individual host railroads within the route segments that they control.

[2] There are several uncommon situations that can affect the calculation of customer OTP. Customers on canceled trains (less than 4 hours advance notice) are counted as late customer arrivals at their ticketed station if service to their ticketed station is canceled. Customers that are carried beyond their ticketed off-point are included in the customer arrival count at their ticketed off-points. Re-accommodated customers not due to the suspension of a train are excluded from the calculation. Customers on bus bridges (transportation on buses for a portion of a regularly scheduled train route) are excluded from the calculation. If the time that a train arrives at a station is not recorded, ticketed customers detraining at that station are excluded from the customer OTP calculation.

$$Customer\ OTP = \frac{Customers\ Arriving\ at\ Detraining\ Point\ within\ 15\ Minutes\ of\ Scheduled\ Arrival\ Time}{Total\ Number\ of\ Customers}$$

The following table provides a hypothetical customer OTP calculation for a single train over two days. The table provides the minutes late, arrival status (''OT'' for on-time, ''LT'' for late), total number of customer arrivals, and number of on-time customer arrivals, by station, for each day of operation and the two days overall.

Customer On-Time Performance Calculations

	Train 130(1)				Train 130(2)				Overall	
Station	Minutes Late	Status	Customer Arrivals	OT Customers	Minutes Late	Status	Customer Arrivals	OT Customers	Customer Arrivals	OT Customers
WAS	-	-	-	-	-	-	-	-	-	-
NCR	-3	OT	2	2	0	OT	4	4	6	6
BWI	3	OT	12	12	2	OT	7	7	19	19
BAL	1	OT	15	15	1	OT	9	9	24	24
ABE	5	OT	1	1	3	OT	0	0	1	1
WIL	5	OT	18	18	2	OT	13	13	31	31
PHL	1	OT	31	31	1	OT	38	38	69	69
TRE	2	OT	9	9	2	OT	16	16	25	25
MET	0	OT	14	14	-1	OT	19	19	33	33
EWR	2	OT	2	2	31	LT	3	0	5	2
NWK	4	OT	9	9	49	LT	10	0	19	9
NYP	2	OT	41	41	46	LT	37	0	78	41
Total			154	154			156	106	310	260
Customer OTP				100%				68%		84%

In this example, customer OTP is 100% on day 1, 68% on day 2, and 84% for the two days combined. Because the number of customers on this train is different by station and by day, the aggregate customer OTP over the period is not a straight average of the daily numbers.

In addition, FRA is proposing a minimum standard for customer OTP of 80 percent for any 2 consecutive calendar quarters. FRA is proposing only one standard in connection with the OTP and train delays metrics to promote clarity and compliance. FRA emphasizes that 80 percent would be a minimum standard, and FRA would expect that some intercity passenger rail services should reliably achieve a higher standard of performance. The proposed 80 percent customer OTP standard is consistent with the statutory requirement in 49 U.S.C. 24308(f)(1).

IV. OTP, Train Schedules, and STB Investigations of Performance

A. In General

The proposed Metrics and Standards are connected to STB's investigation of substandard intercity passenger train performance under 49 U.S.C. 24308(f) ''to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators.'' Specifically, the proposed customer OTP metric and standard would inform when STB could initiate such an investigation and the proposed train delays metrics would likely be relevant to the investigation itself. In addition, § 24308(f) states that, ''[a]s part of its investigation, the Board has authority to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays.''

A train's schedule can affect the performance of a train. As a result, and as recognized in § 24308(f), a train's schedule can be relevant to an STB investigation. FRA believes it is helpful here to describe the relationship between a train schedule and its OTP, as well as several important train scheduling principles, and how these issues may ultimately inform an STB investigation of substandard intercity passenger train performance.

B. OTP and Train Schedules

The proposed Metrics and Standards in part seek to measure intercity passenger train OTP and to set a minimum OTP standard. Where a train's OTP is measured against the train schedule provided to the public (the published train schedule), the train's schedule should be aligned with the particular OTP measure used to evaluate the train's performance.

As discussed, this NPRM proposes a customer OTP metric and standard. Train schedules, and, in particular, the distribution of the recovery time element of those schedules, should be aligned with the customer OTP metric. Historically, Amtrak's published train schedules have not been designed with a customer OTP metric in mind. As such, FRA recommends that Amtrak and the host railroads identify the current Amtrak published train schedules that do not currently align fully with the customer OTP metric and discuss how to align them.[3] To facilitate this collaboration, FRA would suggest emphasizing the 3 train schedule principles in section (C) below.[4]

C. Train Schedule Principles

FRA has identified the following 3 train schedule principles: (1) Redistribute recovery time in the published train schedules to improve alignment with the proposed customer OTP metric; (2) when supported, modify the published train schedule to accommodate temporarily changed conditions on the rail line; and (3) when supported, modify the published train schedule to accommodate long-term or permanently changed conditions on the rail line.[5] Each principle is further

[3] It should be noted that schedules are agreed upon by Amtrak and the host railroads as part of their bilateral access and service agreements.

[4] These principles are purely for the purpose of facilitation. FRA is not requiring that the parties use them.

[5] FRA recognizes that Amtrak and individual host railroads have existing agreements that contain agreed-upon schedules as well as procedures and processes for modifying those schedules, and that those agreements remain in place and are not altered or negated by any principle proposed in this

described below. The defined terms below are used to ensure a consistency of understanding (and are for the sole purpose of describing terms used in the OTP, Train Schedules, and STB Investigations of Performance section of this preamble).

1. Definitions

a. ''Dwell time'' means the scheduled time assigned to stations and servicing stops to account for normal work, including handling passengers and baggage, scheduled switching of equipment in or out of consist, scheduled locomotive and train servicing, and scheduled crew changes.

b. ''Host railroad'' means any railroad over which intercity passenger trains operate.

c. ''Miscellaneous time'' means a time classification other than Pure Running Time, Dwell Time, or Recovery Time that may be added to a schedule on a route-specific basis (such as planned meets with other Amtrak trains).

d. ''Pure running time'' or ''PRT'' means the minimum amount of time required for a train to operate between two locations via its normal routing. PRT of a route is the sum of the PRTs of location-to-location segments on the route. PRT is based solely on the physical characteristics of the route and train attributes. Segment (and route) characteristics include distance, track gradient, speed limits (including permanent, but not temporary, speed restrictions), signal aspects, and acceleration/deceleration time required at stations. Train attributes include the number and weight of cars in the train, the horsepower per ton ratio, and the acceleration/deceleration capabilities of the equipment.

e. ''Recovery time'' means time added to a schedule to help a train ''recover'' to published schedule on-time operation in the event that it encounters delays.

f. ''Replay'' means an electronic recreation and display of train movements and dispatcher's actions over a period of time on a track diagram emulating the dispatcher's working screen. This data file can be played back at various speeds for the purpose of reviewing track occupancy, movement authority, and train movement information.

g. ''Schedule skeleton'' means a schedule grid used by Amtrak and host railroads to communicate: (i) The public schedule of an Amtrak train; and (ii) the schedule of operations of an Amtrak train on host railroads. Schedule skeletons indicate, for each train, the: (a) Time of arrival at the point of entry to the rail lines of a host railroad, and time of departure from the point of exit from the rail lines of a host railroad; (b) dwell time at each station and servicing location on the rail lines of a host railroad; and (c) pure running time, recovery time, and miscellaneous time within a segment.

2. Train Schedule Principle: Recovery Time Redistribution

Published train schedules that are not currently aligned with the proposed customer OTP metric should be adjusted by redistributing the current recovery time. Recovery time redistribution should not add time to the current published train schedule.

3. Train Schedule Principle: Temporary Modifications

When supported, a published train schedule should be modified to accommodate temporary changed conditions on the rail line. Temporary modifications are typically for a period of less than 3 months and may include: Major maintenance and construction projects;[6] expected and unexpected environmental conditions or disruptions; and factors outside of the direct control of the host railroad. Aligning the published train schedule with such changed conditions provides a more predictable travel experience for the customer.

Temporary schedule modification requests should be supported by: (i) A current and proposed schedule skeleton; (ii) a detailed description of the temporary conditions, including: The specific location of the temporary conditions; the circumstances surrounding the temporary conditions; any operational adjustments implemented or planned for implementation for any trains (freight or passenger) in response to the temporary conditions; any infrastructure modifications implemented or planned for implementation in response to the temporary conditions; and the expected duration of the temporary conditions; and (iii) where available, (A) replay files from the host railroad's dispatching systems that are sufficient to demonstrate the change in condition for the Amtrak route, (B) data to support operations analyses of current and proposed conditions, including traffic data, analysis inputs and assumptions, data relating to capital expenditures affecting capacity, or other equivalent data, and (C) data collected through field checks.[7]

4. Train Schedule Principle: Long-Term and Permanent Modifications

When supported, a published train schedule should be modified to accommodate long-term or permanently changed conditions on the rail line. Long-term and permanent modifications have an expected duration of 6 months or more. For example, a long-term or permanent change in conditions may include: Changes to the physical characteristics of the rail lines of the host railroad, or factors outside of the direct control of the host railroad. Aligning the published train schedule with such changed conditions provides a more predictable travel experience for the customer.

Long-term and permanent schedule modification requests should be supported by: (i) A current and proposed schedule skeleton for the affected train; (ii) a detailed description of the long-term or permanent change of conditions; and (iii) where available, (A) 36 months of replay files from the host railroad's dispatching system that are sufficient to demonstrate the change in condition on the Amtrak route, (B) data to support operations simulation analyses of current and anticipated future conditions, including traffic data, analysis inputs and assumptions, data relating to capital expenditures affecting capacity, or other equivalent data, and (C) data collected through field checks.

D. FRA Engagement

FRA understands that implementing these principles may be challenging. To assist, FRA invites Amtrak and the host railroads to meet with FRA on an as-needed basis regarding their progress.

E. FRA Reporting

As discussed above, FRA's first quarterly report on intercity passenger

NPRM. FRA also recognizes that there are contractual and statutory remedies for parties to those agreements to pursue in the event of a dispute regarding the terms of those agreements, including terms regarding performance, and nothing in this NPRM would be intended to conflict with those remedies. It should also be noted that § 207(c) states that, to the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards into their access and service agreements.

[6] Major maintenance and construction projects are typically characterized by sufficient scale and scope that: (i) Resulting delays from the project cannot be absorbed by existing recovery time; (ii) the project is performed by ''system'' gangs rather than ''division'' gangs; (iii) the host railroad is modifying freight schedules to accommodate the project; (iv) the project duration is at least 4 days; (v) the project is planned sufficiently in advance to allow at least 4 weeks advance notice to Amtrak to allow schedules to be adjusted and passengers notified, as appropriate; and (vi) the project work is limited in both time and geography (the project has dedicated resources, a timeline, and a planned conclusion date).

[7] A field check is a technique used to evaluate the performance of an Amtrak train, typically by riding onboard the Amtrak locomotive.

train performance would cover the first full calendar quarter 3 months after the date of publication of the final rule in the **Federal Register**. From that full calendar quarter onward, whether or not a train schedule is modified, that train's performance may be the subject of an investigation under 49 U.S.C. 24308(f) if the customer OTP averages less than 80 percent for any 2 consecutive calendar quarters.[8]

F. STB Investigations of Train Performance

In light of the relationship between this NPRM and STB's train performance investigations, FRA invites STB to submit comments regarding the NPRM. In particular, FRA encourages any suggested revisions and/or clarifications (to the NPRM's preamble and/or regulatory text) that could improve STB's ability to conduct a train performance investigation.

FRA believes that certain information could be particularly relevant to STB in determining whether and to what extent delays or failures to achieve minimum standards are due to causes that could reasonably be addressed by a host railroad or by the intercity passenger rail operator. For example, host railroad dispatching records and replay files may be quite relevant to such an inquiry. In addition, if published train schedules are relevant to a performance investigation, then it would be useful for STB to examine evidence in connection with the scheduling principles described above.

V. Section-by-Section Analysis

Section 273.1 Purpose

This section provides that the proposed rule would carry out the statutory mandate in Section 207 of the Passenger Rail Investment and Improvement Act of 2008 requiring FRA and Amtrak jointly to develop metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations.

Section 273.3 Definitions

This section contains the definitions FRA proposes to use in this rule for the following terms: Adjusted operating expenses; adjusted operating revenue; Amtrak; Amtrak's customer satisfaction survey; Amtrak-responsible delays; avoidable operating costs; fully allocated core operating costs; host-responsible delays; not well-served communities; passenger revenue; and third party delays.

This section proposes to define the term ''adjusted operating expenses'' to mean Amtrak's operating expenses adjusted to exclude certain expenses that are not considered core to operating the business. The major exclusions are depreciation, capital project related expenditures not eligible for capitalization, non-cash portion of pension and post-retirement benefits, and Amtrak's Office of Inspector General expenses (which are separately appropriated).

This section proposes to define the term ''adjusted operating revenue'' to mean Amtrak's operating revenue adjusted to exclude certain revenue that is associated with capital projects. The major exclusions are the amortization of State capital payments and capital project revenue related to expenses not eligible for capitalization.

This section proposes to define the term ''Amtrak'' to mean the National Railroad Passenger Corporation.

This section proposes to define the term ''Amtrak's customer satisfaction survey'' to mean a market-research survey that measures Amtrak's satisfaction score as measured by specific service attributes that cover the entire customer journey.

This section proposes to define the term ''Amtrak-responsible delays'' to mean delays recorded by Amtrak, in accordance with Amtrak procedures, as Amtrak-responsible delays, including passenger-related delays at stations, Amtrak equipment failures, holding for connections, injuries, initial terminal delays, servicing delays, crew and system delays, and other miscellaneous Amtrak-responsible delays.

This section proposes to define the term ''avoidable operating costs'' to mean costs incurred by Amtrak to operate train service along a route that would no longer be incurred if the route were no longer operated.

This section proposes to define the term ''fully allocated core operating costs'' to mean Amtrak's total costs associated with operating an Amtrak route, including direct operating expenses, a portion of shared expenses, and a portion of corporate overhead expenses. Fully allocated core operating costs exclude ancillary and other expenses that are not directly reimbursed by passenger revenue to match revenues with expenses.

This section proposes to define the term ''host-responsible delays'' to mean delays recorded by Amtrak, in accordance with Amtrak procedures, as host-responsible delays, including freight train interference, slow orders, signals, routing, maintenance of way, commuter train interference, passenger train interference, catenary or wayside power system failure, and detours.

This section proposes to define the term ''not well-served communities'' to mean those rural communities: Within 25 miles of an intercity passenger rail station; more than 75 miles from a large airport; and more than 25 miles from any other airport with scheduled commercial service or an intercity bus stop.[9]

This section proposes to define the term ''passenger revenue'' to mean intercity passenger rail revenue generated from passenger train operations, including ticket revenue, food and beverage sales, operating payments collected from States or other sponsoring entities, special trains, and private car operations.

This section proposes to define the term ''third party delays'' to mean delays recorded by Amtrak, in accordance with Amtrak procedures, as third party delays, including bridge strikes, debris strikes, customs, drawbridge openings, police-related delays, trespassers, vehicle strikes, utility company delays, weather-related delays (including heat or cold orders, storms, floods/washouts, earthquake-related delays, slippery rail due to leaves, flash-flood warnings, wayside defect detector actuations caused by ice, and high-wind restrictions), acts of God, or unused recovery time.

Section 273.5 On-Time Performance and Train Delays

Paragraph (a)(1) of this section proposes that the customer on-time performance metric is the percentage of all customers on an intercity passenger rail train who arrive at their detraining point within 15 minutes of their published scheduled arrival time, reported by train and by route.

Paragraph (a)(2) of this section proposes a minimum standard for customer on-time performance of 80 percent for any 2 consecutive calendar quarters. This standard is consistent with the statutory requirement in 49 U.S.C. 24308(f)(1).

Paragraph (b) of this section proposes that the train delays metric is the total

[8] This NPRM would not require published train schedule modifications or implementation of the published train schedule principles. Rather, these principles would be intended as a resource, and a starting point, for Amtrak and the host railroads to discuss train schedules (in the context of their existing bilateral access and service agreements). It is possible that Amtrak and one or more host railroad may not agree to modify certain train schedules.

[9] The proposed definition relies on research completed by the Bureau of Transportation Statistics on access to intercity transportation in rural areas. For this research, large airports are defined as airports with at least 0.25 percent of total U.S. passenger boardings in a year. *See https://datahub.transportation.gov/stories/s/gr9y-9gjq.*

minutes of delay for all Amtrak-responsible delays, host-responsible delays, and third party delays, for the host railroad territory within each route. Minutes of delay are measured against a route's pure running time and provide information about train delays that may signal a need to modify operating practices, make infrastructure investments, or investigate other issues that Amtrak and a host railroad could use to improve train performance. Train delays for the Northeast Corridor (NEC) would also be reported.

Paragraph (c) of this section proposes that the train delays per 10,000 train miles metric is the minutes of delay per 10,000 train miles for all Amtrak-responsible and host-responsible delays, for the host railroad territory within each route. The metric is calculated by dividing minutes of delay (both Amtrak-responsible delays and host-responsible delays) by the number of Amtrak train miles operated over a host railroad multiplied by 10,000, for the host railroad territory within each route. Minutes of Amtrak-responsible delay and host-responsible delay have historically been normalized by 10,000 train miles to compare performance more easily on routes of varying length. This calculation is helpful when assessing an individual railroad's performance on a route that has more than one host. Train delays per 10,000 train miles for the NEC would also be reported. FRA invites comments on alternative methods for comparing delay minutes among different hosts and routes.

Paragraph (d) of this section proposes that the average minutes late per late customer metric is the average minutes late that late customers arrive at their detraining stations, reported by route. This metric excludes on-time customers that arrive within 15 minutes of their scheduled time. This metric provides information about the severity of lateness encountered by Amtrak customers on each route.

Section 273.7 Customer Service

Paragraph (a) of this section proposes that the customer satisfaction metric is the percent of respondents to Amtrak's customer satisfaction survey who provided a score of 70 percent or greater for their ''overall satisfaction'' on their most recent trip, by route, shown both adjusted for performance and not adjusted for performance. Amtrak's customer satisfaction survey is a market-research survey that measures more than fifty specific service attributes that cover the entire customer journey. FRA will place the customer satisfaction survey in the docket for this rulemaking (FRA–2019–0069). It should be noted that Amtrak can change the customer satisfaction survey, and such changes could in turn impact the information reported for the customer service metrics proposed in this NPRM. However, in the event Amtrak changes the survey, the new survey would continue to seek information in connection with the proposed customer satisfaction metrics (a survey change would just modify how the survey solicits this information). FRA seeks comment on whether the customer satisfaction survey should include any additional questions to inform a better understanding of customer satisfaction.

Amtrak adjusts overall satisfaction score performance by removing passengers who arrive at their destinations on State-supported and long-distance routes excessively late (30 minutes late for State-supported routes and 120 minutes for long-distance routes) from the system-wide calculation. Typically, on these routes, the major causes of passenger lateness are beyond Amtrak's control. By removing these customer responses from the calculations, most of the impact from these significantly late customers (whose responses may be overly influenced by the train's late arrival) is removed. Both the performance adjusted and non-performance adjusted overall satisfaction scores would be provided to reflect the responses of all Amtrak customers.

Paragraph (b) of this section proposes that the Amtrak personnel metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of Amtrak personnel on their most recent trip, by route, updated on an annual basis.

Paragraph (c) of this section proposes that the information given metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of information provided by Amtrak on their most recent trip, by route, updated on an annual basis.

Paragraph (d) of this section proposes that the on-board comfort metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board comfort on their most recent trip, by route, updated on an annual basis.

Paragraph (e) of this section proposes that the on-board cleanliness metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board cleanliness on their most recent trip, by route, updated on an annual basis.

Paragraph (f) of this section proposes that the on-board food service metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board food service on their most recent trip, by route, updated on an annual basis.

FRA seeks comment on whether the customer service category of metrics should include metrics with quantitative measurements that are not based on a survey score (*e.g.,* a metric measuring time taken for the boarding process, time in line waiting for customer service, or time on hold waiting for customer service).

Section 273.9 Financial

Paragraph (a) of this section proposes that the cost recovery metric is Amtrak's adjusted operating revenue divided by Amtrak's adjusted operating expense. This metric would be reported at the corporate level/system-wide and for each route and would be reported in constant dollars of the reporting year based on the Office of Management and Budget's gross domestic product chain deflator.

Paragraph (b) of this section proposes that the avoidable operating costs covered by passenger revenue metric is the percent of avoidable operating costs divided by passenger revenue for each route, shown with and without State operating payments. Each route's operating costs can be separated into three components: Frequency variable costs, route variable costs, and system/fixed costs. Avoidable operating costs are the sum of frequency and route variable costs. Frequency variable costs are costs that vary based on short-term decisions to adjust a route's schedule or frequency, not as a result of long-term decisions to add or eliminate a service permanently. Frequency variable costs typically occur directly and immediately with the service change. Frequency variable costs may include train and engine crew labor, on-board service labor, fuel and power, commissary provisions, specific yard operations, connecting motor coaches, and station staffing expenses.

Route variable costs are costs that vary based on long-term decisions to add or eliminate service and have a broader impact. Route variable costs typically require a separate management action to achieve a change in cost. Route variable costs may include car and locomotive maintenance turnaround, on-board passenger technology, commissary operations, direct advertising, specific reservations and call centers costs, station facility operations, station technology, maintenance of way, block and tower operations, regional/local police, and insurance expenses. These costs do not vary with individual train frequencies but may vary if service is increased or reduced on a larger scale. For example, costs for food and beverages stocked on a train would be avoidable if a single train were cancelled, but the commissary supporting the route would continue operations if other trains remained. Route variable costs attempt to capture the potential costs that would vary if the entire route were suspended or eliminated and the commissary supporting it no longer operated. Over time, or with a large enough expansion or reduction in service, the shared costs would be expected to change.

System/fixed costs are not likely to vary with smaller service changes and would not change if a single route were added or eliminated. System/fixed costs may include marketing and distribution, national police, environmental and safety, and general and administrative expenses.

Adding frequency variable and route variable costs to calculate avoidable operating costs does not make any distinction between short- and long-term avoidable costs, but results in a single avoidable cost figure for a single route at a future time. This approach represents a maximum saving, or cost avoided, and may be lower depending on the specific context of each individual route. The results of this approach are limited to the costs avoided if a single service is permanently eliminated. If multiple routes are eliminated, it is likely that some fixed costs will also decrease. Corporate-wide costs such as general and administrative expenses may shrink to reflect the size of the smaller business. In the event an actual elimination in service is contemplated, a detailed planning analysis would be required, considering the location of the route and the facilities that serve it, to determine the cost impacts.

The metric reflects avoidable operating costs as a percentage of passenger revenue, which, when shown at the route level, provides information about cost recovery, or the ability of the route to cover avoidable operating costs with revenue generated. States or other sponsoring entities also provide operating payments to Amtrak to provide service for trains on State-supported routes, which is classified as passenger revenue. To understand better the impact of these State payments, the metric avoidable operating costs covered by passenger revenue would be calculated in two ways: First, as a percent dividing avoidable operating costs by passenger revenue, and second, as a percent dividing avoidable operating costs by passenger revenue without State operating payments.

Paragraph (c) of this section proposes that the fully allocated core operating costs covered by passenger revenue metric is the percent of fully allocated core operating costs divided by passenger revenue for each route, shown with and without State operating payments. Fully allocated core operating costs include the fully-loaded share of overhead-type costs that pertain to more than one route or to the company as a whole. Costs are limited to ''core'' expenses (*i.e.,* related to the provision of intercity passenger trains) to match expenses with passenger revenue.

Paragraph (d) of this section proposes that the ridership metric is the number of passenger-miles divided by train-miles for each route. The proposed metric measures the average number of passengers on each of the route's trains.

The definitions of terms in section 273.9 are only intended to apply to this NPRM and Amtrak financial reporting herein.

Section 273.11 Public Benefits

Paragraph (a) of this section proposes that the connectivity metric is the percent of passengers connecting to and from other Amtrak routes, updated on an annual basis. The metric will report passengers making connections between NEC, State-supported, and long distances routes, or any combination thereof. Under this metric, a connection would mean a passenger arriving on one train and connecting to a departing train within 23 hours. Section 207 of PRIIA specifies that the metrics shall include ''measures of connectivity with other routes in all regions currently receiving Amtrak service'' for long distance routes. The proposed connectivity metric would provide connectivity information for the entire Amtrak network, including by route for long distance routes.

Paragraph (b) of this section proposes that the missed connections metric is the percent of passengers connecting to/from other Amtrak routes who missed connections due to a late arrival from another Amtrak train, reported by route and updated on an annual basis. A missed connection, particularly in a location with one daily train frequency, can result in a significant impact to the customer.

Paragraph (c) of this section proposes that the community access metric is the percent of Amtrak passenger-trips to and from not well-served communities, updated on an annual basis.

Paragraph (d) of this section proposes that the service availability metric is the total number of daily Amtrak trains per 100,000 residents in a metropolitan statistical area (MSA) for each of the top 100 MSAs in the United States, shown in total and adjusted for time of day, updated on an annual basis. Many MSAs are served regularly by Amtrak trains, but during inconvenient travel times. The metric, as adjusted for time of day, would show only those trains that arrive or depart between 5:00 a.m. and 11:00 p.m.

VI. Regulatory Impact and Notices

A. Executive Order (E.O.) 12866, E.O. 13771, and DOT Regulatory Policies and Procedures

This rule is not a significant regulatory action within the meaning of Executive Order 12866 and DOT regulatory policies and procedures,[10] and is not subject to the requirements of Executive Order 13771. FRA has provided an assessment of the costs and cost savings expected to result from implementation of this proposed rule below.

As described, FRA and Amtrak jointly developed metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations (the Metrics and Standards) as required by Section 207 of PRIIA. The Metrics and Standards are generally organized into four categories: On-time performance and train delays, customer service, financial, and public benefits.

Other than the OTP metric, the Metrics and Standards proposed in this NPRM would not pose an additional burden on Amtrak or host railroads. Data such as customer satisfaction and financial information are currently collected by Amtrak and submitted to FRA on a quarterly basis. As a result of the NPRM's customer OTP metric, Amtrak and host railroads may adjust Amtrak's published train schedules to align them with the customer OTP metric. As part of that effort, Amtrak and host railroads may meet to discuss such schedule modifications, and Amtrak may consequently revise the published train schedules.

For purposes of this analysis, FRA assumed that Amtrak and each of the host railroads would meet twice during the first year to discuss revising Amtrak's published train schedules. Amtrak currently has agreements with 31 host railroads. However, eight of these railroads are switching and terminal railroads that would not likely be involved in revising schedules, as Amtrak only operates over those

[10] *See* 5 CFR part 5.

railroads for short distances with very few, if any, stops. If there were discussions between Amtrak and any switching and terminal railroads, then it would be expected to occur during regularly scheduled meetings and would not add any additional burden.

As to the other 23 host railroads, schedule discussions would add time to the current regular meetings held with Amtrak. FRA estimates that such schedule alignment discussions would require an additional ten hours of time for each meeting between Amtrak and a host railroad. FRA estimates that Amtrak would have approximately three employees at each meeting, while host railroads would have approximately three employees at each meeting. FRA estimates the additional meeting time cost to Amtrak would be approximately $70,107,[11] while the additional meeting time cost to host railroads would be approximately $59,457.[12] That cost would be borne both by Amtrak and the host railroads. Further, to prepare for these meetings, Amtrak and the 23 host railroads would need to perform the necessary groundwork, such as historical data analysis of schedules and train performance, as well as analysis of current and future operations, to determine how train schedules should be adjusted. FRA estimates that the cost of this groundwork to Amtrak to be $27,279 [13] and the cost to the host railroads to be $20,459.[14]

All costs would be incurred during the first year. The total cost of this proposed rule would be approximately $177,303.[15] Over a 10-year analysis period, the annualized cost would be approximately $25,244 (present value, 7 percent) and $20,785 (present value, 3 percent).

This proposed rule may result in lower operational costs for Amtrak to the extent it results in improved OTP, which would potentially reduce labor costs, fuel costs, and expenses related to passenger inconvenience, as well as providing benefits to riders from improved travel times and service quality. FRA seeks comments on this assumption and other potential effects of the proposed rule.

Using the third and fourth quarters of fiscal year 2019 as representative performance information, 35 of 45 Amtrak routes performed below 80 percent customer OTP for these two consecutive calendar quarters. With that said, the schedules for at least some of these routes were likely not aligned to a customer OTP metric. FRA seeks comment on how the proposed rule would impact the number of Amtrak routes in compliance with the proposed customer OTP standard.

Due to the difficulty in precisely quantifying future benefits to rail routes for improved OTP, combined with the inability to quantify the potential synergistic effects that improved OTP reliability could have across Amtrak's network, FRA has not quantified any potential benefits from lower operational costs or increased revenue that may result from the proposed rule. FRA seeks comments as to any other benefits that could result from the rule, as well as any other quantifiable costs.

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities.

Therefore, FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. FRA will consider all information and comments received in the public comment process when making a determination regarding the economic impact on small entities.

1. Reasons for Considering Agency Action

The Metrics and Standards are being proposed to comply with Section 207 of PRIIA. The Metrics and Standards are generally organized into four categories: On-time performance and train delays, customer service, financial, and public benefits. This NPRM proposes a customer on-time performance (OTP) metric to measure intercity passenger train performance, and proposes to define the customer OTP metric as the percentage of all customers on an intercity passenger rail train who arrive at their detraining point within 15 minutes of their published scheduled arrival time.

2. A Succinct Statement of the Objectives of, and the Legal Basis for, the Proposed Rule

Section 207 requires FRA and Amtrak jointly to develop new or improve existing metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations. As required by Section 207(b), FRA would publish a quarterly report on the performance and service quality of intercity passenger train operations based on the Metrics and Standards proposed in this NPRM. The proposed Metrics and Standards are intended to measure intercity passenger train performance and service quality. The proposed Metrics and Standards may lead to improvements in intercity passenger train performance and service quality.

3. A Description of, and Where Feasible, an Estimate of the Number of Small Entities To Which the Proposed Rule Would Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than seven million dollars. *See* ''Size Eligibility

[11] 23 meetings * 10 hours per meeting * [Amtrak employees' wages: ($114.52 burdened wage rate, STB Group #100 Executives, Officials, & Staff Assistants * 2 employees) + ($75.78 burdened wage rate, STB Group #200, Professional & Administrative * 1 employee)] ≈ $70,108.

[12] 23 meetings * 10 hours per meeting * [Host railroads' employees' wages: ($114.52 burdened wage rate, STB Group #100 Executives, Officials, & Staff Assistants * 1 employee) + ($75.78 burdened wage rate, STB Group #200, Professional & Administrative * 1 employee) + ($68.22 burdened wage rate, STB Group #500, Transportation (Other than Train & Engine) * 1 employee)] ≈ $59,457.

[13] 3 employees * 40 hours per week * 12 weeks * $75.78 burdened wage rate, STB Group #200, Professional & Administrative * 25% (percent of time spent on work related to schedule adjustments and preparation for meetings) ≈ $27,279.

[14] $27,279 (Amtrak labor cost for schedule adjustments) * 75% (estimated amount of time spent by host railroads in relation to Amtrak's cost) = $20,459.

[15] $129,569 (cost of meetings) + $27,279 (Amtrak preparation cost) + $20,459 (Host railroads' preparation cost) ≈ $177,303.

Provisions and Standards,'' 13 CFR part 121, subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. The current threshold is $39.2 million or less.[16] FRA is using this definition for the proposed rule. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, rail equipment supplier, or other respondent is a small entity.

This proposed rule would impact Amtrak and Amtrak's host railroads. This rule would establish a new on-time performance metric, which would likely result in revisions to some of Amtrak's published train schedules. Amtrak is not a small entity and the majority of host railroads are Class I railroads or State Departments of Transportation, none of which are small entities. There are currently twelve host railroads that are small entities, including approximately eight switching and terminal railroads and four short line or regional railroads. There are approximately 695 class III railroads on the general system. Therefore, the twelve small entities potentially affected by this proposed rule would not be considered a substantial number of small entities.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

This NPRM does not require published train schedule modifications. However, FRA assumes that, as a result of the Metrics and Standards, Amtrak would engage with many host railroads to discuss potential published train schedule adjustments to align the schedules with the proposed customer OTP metric.

There are currently twelve host railroads that are small entities, including approximately eight switching and terminal railroads and four short line and regional railroads. The impact on those small entities would be very minimal. The switching and terminal railroads would not likely be burdened by this proposed rule because Amtrak only operates over those routes for short distances and has very few stops along those sections of track. Those railroads already meet with Amtrak on a periodic basis so any discussions regarding their schedule would take place at that time. It is likely that no schedule adjustments would be required along those routes.

As for the four short line and regional railroads, Amtrak has limited stops along those routes so, similarly, discussions regarding published train schedule adjustments would also be brief. Those railroads also already meet with Amtrak on a periodic basis and discussions regarding schedules would take place at that time. Such discussions may add a minimal amount of time to those meetings. However, published train schedule adjustments may not even be necessary for these railroads.

Other than the proposed customer OTP metric, the NPRM would not be an additional burden on Amtrak or the host railroads. Amtrak already collects the data to support these new metrics; therefore, there would be no additional burden.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rules that duplicate, overlap with, or conflict with the proposed regulations in this NPRM. FRA invites all interested parties to submit comments, data, and information demonstrating the potential economic impact on any small entities that would result from the adoption of the proposed language in this NPRM. FRA particularly encourages small entities that could potentially be impacted by the proposed amendments to participate in the public comment process. FRA will consider all comments received during the public comment period for this NPRM when making a final determination of the rule's economic impact on small entities.

6. A Description of Significant Alternatives to the Rule

As required by Section 207 of PRIIA, FRA is proposing the Metrics and Standards. The main alternative to this rulemaking would be to maintain the status quo (*i.e.,* do nothing). However, as required by PRIIA, FRA must develop the Metrics and Standards. The number of entities affected by this proposed rule would not be substantial. FRA anticipates that the impact on those small entities would be very minimal.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C 3501–3520, and its implementing regulations, 5 CFR part 1320, when information collection requirements pertain to nine or fewer entities, Office of Management and Budget (OMB) approval of the collection requirements is not required. Here, information collection only pertains to one railroad, Amtrak. Therefore, OMB approval of the paperwork collection requirements in this proposed rule is not required.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this NPRM under the principles and criteria contained in Executive Order 13132. This NPRM could affect State and local governments to the extent that they sponsor, or

[16] The current Class III revenue threshold is $39,194,876 or less. See *https://www.stb.gov/econdata.nsf/M%20Railroad%20Revenue%20Deflator%20Factors?OpenPage.*

exercise oversight of, intercity passenger rail service. Because this proposed rule is required by Federal statute, the consultation and funding requirements of Executive Order 13132 do not apply.

In sum, FRA has analyzed this proposed rule under the principles and criteria in Executive Order 13132. As explained above, FRA has determined this proposed rule has no federalism implications. Therefore, preparation of a federalism summary impact statement for this proposed rule is not required.

E. Environmental Impact

FRA has evaluated this proposed rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), other environmental statutes, related regulatory requirements, and its NEPA implementing regulations at 23 CFR part 771. Under NEPA, categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations 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. FRA has determined that this proposed rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), ''Promulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.''

In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. *See* 23 CFR 771.116(b). FRA has concluded that no unusual circumstances exist with respect to this proposed regulation that would trigger the need for a more detailed environmental review. The purpose of this rulemaking is to propose metrics and standards to measure the performance and service quality of intercity passenger train operations. FRA does not anticipate any environmental impacts from this proposal and finds there are no unusual circumstances present in connection with this proposed rule.

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to effect historic properties. *See* 16 U.S.C. 470. FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f). *See Department of Transportation Act of 1966,* as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

F. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2(a) (91 FR 27534 May 10, 2012) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this proposed rule under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

G. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this proposed rule under the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The proposed rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

H. Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Unfunded Mandates Reform Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This proposed rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this proposed rule in accordance with Executive Order 13211. FRA has determined that the proposals in this rule are not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this proposed rule is not a ''significant energy action'' within the meaning of Executive Order 13211.

Executive Order 13783, ''Promoting Energy Independence and Economic Growth,'' requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. 82 FR 16093 (March 31, 2017). Executive Order 13783 defines ''burden'' to mean unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources. FRA determined this proposed rule will not potentially burden the development or use of domestically produced energy resources.

J. Trade Impact

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FRA has assessed the potential effect of this proposed rule on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act of 1979.

K. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects in 49 CFR Part 273

Railroads, Transportation.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

■ 1. Add a new part 273 to read as follows:

PART 273—METRICS AND MINIMUM STANDARDS FOR INTERCITY PASSENGER TRAIN OPERATIONS

Authority: Sec. 207, Div. B, Pub. L. 110–432; 49 U.S.C. 24101, note; and 49 CFR 1.89.

§ 273.1 Purpose.

The purpose of this part is to carry out the statutory mandate in Section 207 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110–432, 122 Stat. 4916–4917 (Oct. 16, 2008) requiring metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations.

§ 273.3 Definitions.

As used in this part—

Adjusted operating expenses means Amtrak's operating expenses adjusted to exclude certain expenses that are not considered core to operating the business. The major exclusions are depreciation, capital project related expenditures not eligible for capitalization, non-cash portion of pension and post-retirement benefits, and Amtrak's Office of Inspector General expenses.

Adjusted operating revenue means Amtrak's operating revenue adjusted to exclude certain revenue that is associated with capital projects. The major exclusions are the amortization of State capital payments and capital project revenue related to expenses not eligible for capitalization.

Amtrak means the National Railroad Passenger Corporation.

Amtrak's customer satisfaction survey means a market-research survey that measures Amtrak's satisfaction score as measured by specific service attributes that cover the entire customer journey.

Amtrak-responsible delays means delays recorded by Amtrak, in accordance with Amtrak procedures, as Amtrak-responsible delays, including passenger-related delays at stations, Amtrak equipment failures, holding for connections, injuries, initial terminal delays, servicing delays, crew and system delays, and other miscellaneous Amtrak-responsible delays.

Avoidable operating costs means costs incurred by Amtrak to operate train service along a route that would no longer be incurred if the route were no longer operated.

Fully allocated core operating costs means Amtrak's total costs associated with operating an Amtrak route, including direct operating expenses, a portion of shared expenses, and a portion of corporate overhead expenses. Fully allocated core operating costs exclude ancillary and other expenses that are not directly reimbursed by passenger revenue to match revenues with expenses.

Host-responsible delays means delays recorded by Amtrak, in accordance with Amtrak procedures, as host-responsible delays, including freight train interference, slow orders, signals, routing, maintenance of way, commuter train interference, passenger train interference, catenary or wayside power system failure, and detours.

Not well-served communities means those rural communities: Within 25 miles of an intercity passenger rail station; more than 75 miles from a large airport; and more than 25 miles from any other airport with scheduled commercial service or an intercity bus stop.

Passenger revenue means intercity passenger rail revenue generated from passenger train operations, including ticket revenue, food and beverage sales, operating payments collected from States or other sponsoring entities, special trains, and private car operations.

Third party delays means delays recorded by Amtrak, in accordance with Amtrak procedures, as third party delays, including bridge strikes, debris strikes, customs, drawbridge openings, police-related delays, trespassers, vehicle strikes, utility company delays, weather-related delays (including heat or cold orders, storms, floods/washouts, earthquake-related delays, slippery rail due to leaves, flash-flood warnings, wayside defect detector actuations caused by ice, and high-wind restrictions), acts of God, or unused recovery time.

§ 273.5 On-time performance and train delays.

(a) *Customer on-time performance*—(1) *Metric.* The customer on-time performance metric is the percentage of all customers on an intercity passenger rail train who arrive at their detraining point within 15 minutes of their published scheduled arrival time, reported by train and by route.

(2) *Standard.* The customer on-time performance minimum standard is 80 percent for any 2 consecutive calendar quarters.

(b) *Train delays.* The train delays metric is the total minutes of delay for all Amtrak-responsible delays, host-responsible delays, and third party delays, for the host railroad territory within each route.

(c) *Train delays per 10,000 train miles.* The train delays per 10,000 train miles metric is the minutes of delay per 10,000 train miles for all Amtrak-responsible and host-responsible delays, for the host railroad territory within each route.

(d) *Average minutes late per late customer.* The average minutes late per late customer metric is the average minutes late that late customers arrive at their detraining stations, reported by route. This metric excludes on-time customers that arrive within 15 minutes of their scheduled time.

§ 273.7 Customer service.

(a) *Customer satisfaction.* The customer satisfaction metric is the percent of respondents to the Amtrak customer satisfaction survey who provided a score of 70 percent or greater for their ''overall satisfaction'' on their most recent trip, by route.

(b) *Amtrak personnel.* The Amtrak personnel metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of Amtrak personnel on their most recent trip, by route, updated on an annual basis.

(c) *Information given.* The information given metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of information provided by Amtrak on their most recent trip, by route, updated on an annual basis.

(d) *On-board comfort.* The on-board comfort metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board comfort on their most recent trip, by route, updated on an annual basis.

(e) *On-board cleanliness.* The on-board cleanliness metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board cleanliness on their most recent trip, by route, updated on an annual basis.

(f) *On-board food service.* The on-board food service metric is the average score from respondents to the Amtrak customer satisfaction survey for their review of on-board food service on their most recent trip, by route, updated on an annual basis.

§ 273.9 Financial.

(a) *Cost recovery.* The cost recovery metric is Amtrak's adjusted operating revenue divided by Amtrak's adjusted operating expense. This metric is reported at the corporate level/system-wide and for each route and is reported in constant dollars of the reporting year based on the Office of Management and Budget's gross domestic product chain deflator.

(b) *Avoidable operating costs covered by passenger revenue.* The avoidable operating costs covered by passenger revenue metric is the percent of avoidable operating costs divided by passenger revenue for each route, shown with and without State operating payments.

(c) *Fully allocated core operating costs covered by passenger revenue.* The fully allocated core operating costs covered by passenger revenue metric is the percent of fully allocated core operating costs divided by passenger revenue for each route, shown with and without State operating subsidies.

(d) *Ridership.* The ridership metric is the number of passenger-miles divided by train-mile for each route.

§ 273.11 Public benefits.

(a) *Connectivity.* The connectivity metric is the percent of passengers connecting to and from other Amtrak routes, updated on an annual basis.

(b) *Missed connections.* The missed connections metric is the percent of passengers connecting to/from other Amtrak routes who missed connections due to a late arrival from another Amtrak train, reported by route and updated on an annual basis.

(c) *Community access.* The community access metric is the percent of Amtrak passenger-trips to and from not well-served communities, updated on an annual basis.

(d) *Service availability.* The service availability metric is the total number of daily Amtrak trains per 100,000 residents in a metropolitan statistical area (MSA) for each of the top 100 MSAs in the United States, shown in total and adjusted for time of day, updated on an annual basis.

Issued in Washington, DC.

Ronald L. Batory,

Administrator.

[FR Doc. 2020–06245 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 180220192–8192–01]

RIN 0648–BH82

Shipping Act, Merchant Marine, and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fishing Vessel, Fishing Facility and Individual Fishing Quota Lending Program

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

ACTION: Proposed rule; withdrawal.

SUMMARY: The National Marine Fisheries Service (NMFS) withdraws a proposed rule proposing to implement Fisheries Finance Program (FFP) financing of the cost of constructing new fishing vessels. NMFS published the proposed rule in the **Federal Register** on November 2, 2018. After careful consideration, NMFS has decided that the proposed changes discussed in the proposed rule are not warranted at this time.

DATES: The proposed rule published on November 2, 2018 (83 FR 55137), is withdrawn as of March 31, 2020.

FOR FURTHER INFORMATION CONTACT: Elaine Saiz, NMFS, (301) 427–8752, *elaine.saiz@noaa.gov.*

SUPPLEMENTARY INFORMATION: In 2016, Congress passed section 302 of the Coast Guard Authorization Act of 2015, which included specific authority for the FFP to finance the construction of fishing vessels in a fishery that is managed under a limited access system. The proposed regulations provided guidance to implement this financing while also protecting fish resources.

NMFS published a proposed rule to implement the financing in the **Federal Register** on November 2, 2018, (83 FR 55137).

Following public comment and consultations with the President's Office of Management and Budget, NMFS again analyzed the effects of the proposed rule and decided that the changes covered in the proposed rule are not warranted at this time. Therefore, NMFS is withdrawing the proposed rule published in the **Federal Register** on November 2, 2018 (83 FR 55137).

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

Dated: March 23, 2020.

Samuel D. Rauch III,

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

[FR Doc. 2020–06455 Filed 3–30–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 85, No. 62

Tuesday, March 31, 2020

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–20–0017; NOP–20–02]

National Organic Standards Board (NOSB): Call for Nominations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; call for nominations

SUMMARY: The National Organic Standards Board (NOSB) was established to assist in the development of standards for substances to be used in organic production and to advise the Secretary on the implementation of the Organic Foods Production Act of 1990 (OFPA). Through this Notice, the United States Department of Agriculture (USDA) is announcing its call for nominations to fill five vacancies. Descriptions of the five positions are listed below under supplementary information. Appointees will serve a five-year term beginning January 24, 2021 and ending January 23, 2026. Additionally, the USDA seeks nominations for a pool of candidates that the Secretary of Agriculture can draw upon as replacement appointees if unexpected vacancies occur.

DATES: Written nominations must be postmarked on or before June 1, 2020.

ADDRESSES: Applications can be sent via email to Michelle Arsenault at *Michelle.Arsenault@usda.gov,* or mailed to: USDA–AMS–NOP, 1400 Independence Avenue SW, Room 2642–S, Ag Stop 0268, Washington, DC 20250–0268. Electronic submittals are preferred.

FOR FURTHER INFORMATION CONTACT: Michelle Arsenault, (202) 720–0081; Email: *Michelle.Arsenault@usda.gov.*

SUPPLEMENTARY INFORMATION: The OFPA, as amended (7 U.S.C. 6501–6524), requires the Secretary to establish the NOSB in accordance with the Federal Advisory Committee Act, as amended. The NOSB is composed of 15 members: Four individuals who own or operate an organic farming operation, or employees of such individuals; two individuals who own or operate an organic handling operation, or employees of such individuals; one individual who owns or operates a retail establishment with significant trade in organic products, or employees of such individuals; three individuals with expertise in areas of environmental protection and resource conservation; three individuals who represent public interest or consumer interest groups; one individual with expertise in the fields of toxicology, ecology, or biochemistry; and one individual who is a certifying agent.

Through this Notice, the USDA seeks to fill the following five positions: Two individuals who own or operate an organic farming operation, or employees of such individuals; two individuals who represent public interest or consumer interest groups; and one individual who is a USDA accredited certifying agent.

Per the OFPA, individuals seeking appointment to the NOSB must meet the definition of the position that they seek as identified under 7 U.S.C. 6518, as well as satisfy the selection criteria for an NOSB member. Selection criteria include the following: An understanding of organic principles and practical experience in the organic community; demonstrated experience and interest in organic production and organic certification; demonstrated experience with respect to agricultural products produced and handled on certified organic farms; a commitment to the integrity of the organic food and fiber industry; demonstrated experience in the development of public policy such as participation on public or private advisory boards, boards of directors, or other comparable organizations; support of consumer and public interest organizations; participation in standards development or involvement in educational outreach activities; the ability to evaluate technical information and to fully participate in Board deliberation and recommendations; the willingness to commit the time and energy necessary to assume Board duties; and other such factors as may be appropriate for specific positions.

All appointees will serve a five-year term beginning January 24, 2021, and ending January 23, 2026.

To nominate yourself or someone else, please submit the following: A resume (required), Form AD–755 (required), which can be accessed at: *https://www.ocio.usda.gov/document/ad-755,* a cover letter (optional), and a list of endorsements or letters of recommendation (optional). Resumes should be no longer than five (5) pages and should include the following information: The position for which you are applying; current and past organization affiliations; areas of expertise; education; career positions held; any other notable positions held. Previous applicants who wish to be considered must reapply.

If USDA receives a request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) for records relating to NOSB nominations, application materials may be released to the requester. Prior to the release of the information, personally identifiable information protected by the Privacy Act, 5 U.S.C. 552a, will be redacted.

Nominations are open to all individuals without regard to race, color, religion, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that the recommendations of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–06618 Filed 3–30–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0119]

Implementation of Revised Lacey Act Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to provide, among other things, that importers submit a declaration at the time of importation for certain plants and plant products. Enforcement of the declaration requirement began on April 1, 2009, and products requiring a declaration are being phased-in. The purpose of this notice is to inform the public of another phase of the Federal Government's enforcement schedule.

DATES: We will consider all comments that we receive on or before June 1, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0119.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2008–0119, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0119* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy Wayson, National Policy Manager, Lacey Act Program, Compliance and Environmental Coordination Branch, PPQ, APHIS, 4700 River Road Unit 150, Riverdale, MD 20737; (301) 851–2036.

SUPPLEMENTARY INFORMATION:

Background

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in illegally taken wildlife, fish, or plants. The Food, Conservation and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protection to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). The Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported, or sold in violation of any law of the United States or an Indian tribe, or in violation of any State or foreign law that protects plants or that regulates certain specified plant-related activities. The Lacey Act also now makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant.

In addition, Section 3 of the Lacey Act, as amended, makes it unlawful, beginning December 15, 2008, to import certain plants, including plant products, without an import declaration. The declaration must contain the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. For paper and paperboard products containing recycled content, the declaration also must include the average percent of recycled content without regard for species or country of harvest. The plant import declaration requirement does not apply to plants used exclusively as packaging material to support, protect, or carry another item, unless the packaging material itself is the item being imported. Currently, enforcement of the declaration requirement is being phased in, as described in three notices we published in the **Federal Register**,[1] the first on February 3, 2009 (74 FR 5911–5913, Docket No. APHIS–2008–0119), the second on September 2, 2009 (74 FR 45415–45418, Docket No. APHIS–2008–0119), and the third on February 6, 2015 (80 FR 6681–6683, Docket No. APHIS–2008–0119).

In our February 2009 notice, we committed to providing affected individuals and industry with at least 6 months' notice for any products that would be added to the phase-in schedule. The phased-in enforcement schedule began April 1, 2009. The most recent phase (V) began on August 6, 2015. The enforcement schedule is available on the Animal and Plant Health Inspection Service (APHIS) website at *http://www.aphis.usda.gov/plant_health/lacey_act/.* We continue to consider the applicability of the declaration requirement to products not included in the current phase-in schedule and we invite public comment on how the declaration requirement should be enforced as to these products.

Phase VI of the enforcement schedule, which would begin on October 1, 2020, is described below. We invite public comment on the products covered under this phase of the plan, as well as on whether any additional Harmonized Tariff Schedule (HTS) chapters should be included in the current phase-in schedule. Should there be additions to phase VI, we intend to provide at least 6 months' notice to persons and industries affected by those changes to facilitate compliance with the new requirements. Changes will be announced in the **Federal Register**.

Ch. 33 Headings (Essential Oils)

- 3301295109-essential oils of cedarwood
- 3301295121-essential oils of linaloe or bois de rose
- 3301295139-essential oils of sandalwood
- 3301295150-essential oils of ''other''

Ch. 42 Headings (Trunks, Cases, Suitcases)

- 4202292000-trunks, cases, and suitcases of wood
- 4202992000-other, of wood, not lined
- 4202993000-other, of wood, lined

Ch. 44 Headings (Wood and Articles of Wood)

- 441012-oriented strand board (OSB)
- 4415-cases, boxes, crates, drums, containers, pallets, box-pallets, etc.

Ch. 92 Headings (Musical Instruments)

- 9205902000-wind musical instruments: bagpipes
- 9205904020-clarinets
- 9205904080-other (woodwind instruments)
- 9205904060-flutes and piccolos
- 9206002000-drums
- 9207900040-musical instruments (fretted string instruments)
- 9209.92-parts and accessories for musical instruments of heading 9202
- 9209928000-parts and accessories for musical instruments
- 9209992000-parts and accessories for bagpipes
- 9209994040-parts and accessories for other woodwind instruments
- 9209998000-parts and accessories for musical instruments of heading 9202, other

[1] To view these notices and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0119.*

Ch. 96 Headings (Miscellaneous Manufactured Articles)

• 9620005500-monopods, bipods, tripods and similar articles of wood

Additional Information

APHIS will continue to provide the latest information regarding the Lacey Act on our website, *http://www.aphis.usda.gov/plant_health/lacey_act/.* The website currently contains the Lacey Act, as amended; a slideshow covering background and context, requirements, commodities and products covered, information on prohibitions, and the current status of implementation of the declaration requirement of the Lacey Act; frequently asked questions; the phase-in implementation plan; a link to the Lacey Act Web Governance System (LAWGS); and the paper declaration form. The website will be updated as new materials become available. We encourage persons interested in receiving timely updates on APHIS' Lacey Act efforts to register for our stakeholder registry at *https://public.govdelivery.com/accounts/USDAAPHIS/subscriber/new/* and select ''Lacey Act Declaration'' as a topic of interest.

Paperwork Reduction Act

This notice contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The information collection activities included in this notice are approved by the Office of Management and Budget under control number 0579–0349.

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 notice, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

Done in Washington, DC, this 26th day of March 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–06695 Filed 3–30–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0049]

Import Requirements for the Importation of Fresh Blueberries From Chile Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a commodity import evaluation document (CIED) relative to the importation into the United States of blueberries from Chile. Currently, blueberries from Chile imported into the United States from an area in which European grapevine moth is known to exist must be fumigated with methyl bromide. Based on the findings of the CIED, we are proposing to also allow the importation of such blueberries under the provisions of a systems approach. We are making the CIED available to the public for review and comment.

DATES: We will consider all comments that we receive on or before June 1, 2020.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0049.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2019–0049, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0049* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Roman, Senior Regulatory Policy Specialist, RCC, IRM, PHP, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2242.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart L–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–12, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into or disseminated within the United States.

Section 319.56–4 of the regulations provides the requirements for authorizing the importation of fruits and vegetables into the United States, as well as revising existing requirements for the importation of fruits and vegetables. Paragraph (c) of that section provides that the name and origin of all fruits and vegetables authorized importation into the United States, as well as the requirements for their importation, are listed on the internet in APHIS' Fruits and Vegetables Import Requirements database, or FAVIR (*https://epermits.aphis.usda.gov/manual*). It also provides that, if the Administrator of APHIS determines that any of the phytosanitary measures required for the importation of a particular fruit or vegetable are no longer necessary to reasonably mitigate the plant pest risk posed by the fruit or vegetable, APHIS will publish a notice in the **Federal Register** making its pest risk documentation and determination available for public comment.

Currently, blueberries from Chile are listed in FAVIR as a fruit authorized importation into the United States. Blueberries from a region of Chile in which European grapevine moth (*Lobesia botrana,* EGVM) is known to exist (Regions VI, VII, VIII, or XVI) must be fumigated with methyl bromide.

The national plant protection organization (NPPO) of Chile stated that areas of low pest prevalence for EGVM exist in Regions VIII and XVI of Chile, and asked that we evaluate whether blueberries from these two regions could be authorized importation into the United States under a systems approach in lieu of fumigation with methyl bromide. In response to this request, we have prepared a commodity import evaluation document (CIED). The CIED determined that a systems approach consisting of the following measures reasonably mitigates the plant pest risk associated with blueberries from Regions VIII and XVI:

• The NPPO of Chile would have to enter into an operational workplan with APHIS that details the activities and responsibilities that the NPPO would carry out in order to meet the requirements of the systems approach. APHIS would have to approve the workplan prior to implementation of the systems approach.

• Places of production and packinghouses would have to be registered with and approved by the NPPO of Chile. Additionally, packinghouses would have to be pest exclusionary.

• If the NPPO of Chile determines that a registered place of production or packinghouse is not complying with the provisions of the systems approach, no blueberries from the place of production or packinghouse would be eligible for export into the United States until APHIS and the NPPO conduct an investigation and appropriate remedial actions have been implemented.

• The NPPO of Chile would have to demonstrate continued low pest prevalence for EGVM in Regions VIII and XVI through a national trapping program for EGVM. Trapping density and servicing, as well as thresholds for low pest prevalence, would be detailed in the operational workplan.

• If the place of production is within an area of Region VIII or XVI that is designated by the NPPO of Chile as a regulated area for EGVM, the place of production would have to have a field inspection by the NPPO within 2 weeks prior to harvest with no finds of immature EGVM based on a biometric sample of plants. Places of production in control areas for EGVM would not be authorized to export blueberries to the United States under the terms of the systems approach and blueberries from such areas would have to be fumigated with methyl bromide in order to be exported to the United States.

• Packed blueberries would have to be inspected by the NPPO of Chile prior to export under the auspices of APHIS' preclearance program within Chile.

• Each shipment would have to be accompanied by a phytosanitary certificate issued by the NPPO with an additional declaration that the blueberries were produced in an area of low pest prevalence for EGVM.

• Each shipment would be subject to inspection for quarantine pests at the port of entry into the United States.

• If immature stages of EGVM are detected during field inspections or packinghouse inspections, or any life stage of EGVM is detected at a port of entry into the United States, the consignment could not be imported into the United States and the place of production would be suspended from the systems approach export program until reinstated. Blueberries from that place of production would have to be fumigated with methyl bromide in order to be exported to the United States until such reinstatement.

Therefore, in accordance with § 319.56–4(c)(3), we are announcing the availability of our CIED for public review and comment. This document, as well as a description of the economic considerations associated with the proposed systems approach, may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of these documents by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis you wish to review when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding whether to revise the requirements for the importation of blueberries from Chile in a subsequent notice. If the overall conclusions of our analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will revise the requirements for the importation of blueberries from Chile as described in this notice.

Authority: 7 U.S.C. 1633, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 26th day of March 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–06696 Filed 3–30–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Reinstate an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the Census of Agriculture Content Test. Response to this survey will be voluntary.

DATES: Comments on this notice must be received by June 1, 2020 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0243, by any of the following methods:

• *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.

• *eFax:* (855) 838–6382

• *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

• *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Census of Agriculture Content Test.

OMB Control Number: 0535–0243.

Type of Request: Intent to Seek Reinstatement of an Information Collection.

Abstract: The Census of Agriculture, conducted every five years, is the primary source of statistics concerning the Nation's agricultural industry and provides the basis for the Nation's comparable and robust agricultural data. Results of the 2017 Census of Agriculture are available on the Web at *https://www.nass.usda.gov/AgCensus/index.php.* This Information Collection activity will reinstate the Census of Agriculture Content Test. The purpose of this Content Test is to evaluate proposed changes to the survey methodology and content to reduce respondent burden and maintain the relevance of quality of statistics produced using the Census of Agriculture: Questionnaire format and design, new questions, changes to question wording and location, overall respondent burden, ease of completion, and processing methodology (such as editing and data summary). Results of this test will be studied in preparation for the 2022 Census of Agriculture. Development of the test questionnaire version will come from evaluation of the 2017 Census of Agriculture, testing panels, and cognitive interviews. NASS will also meet with other USDA and Federal agencies and selected State Departments of Agriculture to gather information on data uses and, in some cases, justifications for county-level data. The test will be nation-wide, excluding Alaska and Hawaii, and will be conducted in three phases.

For Phase One, a stratified random sample of approximately 36,000 farm and ranch operators will be mailed questionnaires; samples will be selected to ensure sufficient coverage of various sizes, locations and types of agricultural operations. The sample will be divided into control and treatment groups to test alternative versions of the questionnaires and/or data collection methodologies. Non-respondents will receive follow-up contact by first mail, then telephone.

Phase Two will consist of up to 100 randomly selected agricultural operations who will be asked to participate in cognitive interviews. The sample may consist of some agricultural operations that completed the questionnaire in Phase One, as well as some additional operations selected to ensure sufficient size of comparison groups. The cognitive interviews conducted with Phase One respondents will be used to improve the overall 2022 Census of Agriculture questionnaire by allowing NASS to follow-up with respondents to better understand unusual responses and to ascertain question comprehension. The remainder of the cognitive interview sample will be randomly selected from operations to meet size and type criteria to ensure examination of suspected reporting problems or sections of the form without a sufficient responses in Phase One. The cognitive interviews of this group will also test further 2022 Census of Agriculture questionnaire variations, including the internet version.

For Phase Three a stratified random sample of approximately 15,000 will be mailed letters asking them to go to a supplied internet address to complete the survey. Stratification will be used to ensure sufficient coverage of various sizes and types of agricultural operations. The sample will be divided into control and treatment groups to test alternative versions of the on-line questionnaires and methods to increase on-line response. Non-respondents will receive follow-up contact by mail. Response to all phases of the Census of Agriculture Content Test are voluntary.

Authority: Although the Census of Agriculture is required by law (''Census of Agriculture Act of 1997,'' Public Law 105–113, 7 U.S.C. 2204(g) as amended), this Content Test is voluntary. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Reporting burden for Phase One, (mailout survey) of this collection of information is estimated to average 60 minutes per completed response and two (2) minutes per refusal. This was determined by our experience from past Censuses of Agriculture and by our survey methodologists, based on the length and difficulty of similar surveys. Burden is based on an estimated minimum response rate of 58%. This anticipated response rate is based on similar types of voluntary mail surveys and through the use of a mail questionnaire and (limited) telephone follow-up to non-respondents.

Reporting burden for Phase Two, (cognitive interviews) of this collection of information is estimated to average 120 minutes per completed response and five (5) minutes per refusal. This was determined by our survey methodologists who compared the questionnaire length and difficulty with previous cognitive pretests NASS has conducted.

Reporting burden for Phase Three, (internet test) of this collection of information is estimated to average 35 minutes per completed response and two (2) minutes per refusal. This was determined by our experience from past Censuses of Agriculture and by our survey methodologists, who compared the questionnaire length and difficulty with similar surveys. Since Phase Three is internet only, the average time to complete the questionnaire is less than for Phase One (paper questionnaire and phone follow-up responses only) since the internet version is faster due to automated routing. Burden is based on an estimated minimum response rate of 50% which is similar to response rates observed for voluntary internet based surveys of a similar nature.

Respondents: Potential farm and ranch operators.

Estimated Number of Respondents: 51,200 farmers and/or ranchers

Estimated Total Annual Burden on Respondents: 30,000 hours. (This is based on the expected response rates explained above.)

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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) 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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, March 23, 2020.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2020–06679 Filed 3–30–20; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that the New Mexico Advisory Committee (Committee) to the Commission will hold a series of meetings the purpose of the meetings is for the Committee to discuss the project proposal on wage issues in New Mexico.

DATES: Meetings will be held:

- Tuesday, April 14th at 11:00 a.m. MT.
- Wednesday, May 13th at 2:00 p.m. MT.
- Wednesday, May 27th at 12:00 p.m. MT.

Public Call Information: Dial: 800–458–4121. Conference ID: 9123739.

FOR FURTHER INFORMATION CONTACT: Brooke Peery at *bpeery@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–458–4121, conference ID number: 9123739. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Discussion: Project Proposal Process
IV. Public Comment
V. Adjournment

Dated: March 26, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–06646 Filed 3–30–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee

AGENCY: U.S. Commission on Civil Rights

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the meeting of the Wyoming Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (MDT) Wednesday, April 15, 2020. The purpose of this meeting is for the Committee to review their report on hate crimes.

DATES: Wednesday, April 15, 2020 at 1:00 p.m. MDT

Public Call Information:
Dial: 800–367–2403.
Passcode: 554781.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–367–2403, passcode number: 554781. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzliAAA.*

Please click on ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Discuss Report
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: March 26, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–06647 Filed 3–30–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Maine Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Maine Advisory Committee (Committee) will hold a meeting on Thursday, April 9, 2020, at 12:00 p.m. (EDT) for the purpose of voting on its advisory memorandum on hate crimes in Maine.

DATES: The meeting will be held on Thursday, April 9, 2020, at 12:00 p.m. EDT.

Public Call Information: Dial: 1–888–220–8451, Conference ID: 5315255.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ero@usccr.gov* or 202–381–8915.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll free number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number: 1–888–220–8451 and conference ID number: 5315255.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave., Suite 1150, Washington, DC 20425. They may also be faxed to the Commission at (202) 376–7548, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Maine Advisory Committee link: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzl8AAA.* Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda: Thursday, April 9, 2020 at 12:00 p.m. (EDT)

- Welcome and Roll Call
- Discussion and Vote on Advisory Memorandum
- Other Business
- Public Comment
- Adjournment

Dated: March 26, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–06644 Filed 3–30–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Office of the Secretary

Proposed Information Collection; Comment Request; The Pledge to America's Workers Award

AGENCY: Office of the Secretary, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden and as required by the Paperwork Reduction Act of 1995, invites comments on a new information collection for the Pledge to America's Workers Presidential Award program. The purpose of this notice is to allow for 60 days of public comment.

DATES: To ensure consideration, written or online comments must be submitted on or before June 1, 2020.

ADDRESSES: Direct all written comments to Kelly Welsh, Program Manager, National Institute of Standards and Technology, Mail Stop 1020, 100 Bureau Drive, Gaithersburg, MD 20889–1710, (or via email at *WorkforcePledgeAward@nist.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kelly Welsh, Program Manager, 100 Bureau Drive, Stop 1020, Gaithersburg, MD 20899, 301–975–4307, *WorkforcePledgeAward@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

President Trump has outlined key workforce policy priorities through two Executive Orders. In June 2017, he signed the Presidential Executive Order 13801 Expanding Apprenticeships in America to ''provide more affordable pathways to secure, high paying jobs by promoting apprenticeships and effective workforce development programs.'' In July 2018, he signed the Executive Order 13845 Establishing the President's National Council for the American Worker as amended by Executive Order 13853 (83 FR 35099 as amended by 83 FR 65073), ''to work with private employers, educational institutions, labor unions, other non-profit organizations, and State, territorial, tribal, and local governments to update and reshape our education and job training landscape so that it better meets the needs of American students, workers, and businesses.'' The National Council is creating a national workforce strategy in accordance with the Trump Administration's workforce policy priorities and achievements.

In July 2018, President Trump also launched the Pledge to America's Workers, through which companies and trade groups commit to expanding programs that educate, train, and reskill American workers from high-school age to near-retirement. As of March 2020, more than 430 companies, trade associations, and unions have signed the Pledge, contributing to over 15.8 million new education and training opportunities for American students and workers over the next five years.

The Department of Commerce through the National Institute of Standards and Technology's Baldrige Performance Excellence program is creating a new Presidential Award to recognize demonstrated excellence in implementing the Pledge to America's Workers. This program fulfills the requirements of both Executive Orders, each of which called for the creation of programs to recognize excellence in employer training investments. The Department of Commerce will administer the award program, with support from the Department of Labor, on behalf of the National Council for the American Worker.

II. Method of Collection

The application and instructions can be accessed from the Department of Commerce, the National Institute of Standards and Technology, and Department of Labor websites. All applications should be submitted via email to: *WorkforcePledgeAward@nist.gov.*

III. Data

OMB Control Number: 0690–XXXX.

Form Number(s): None.

Type of Review: New Information Collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 100 per year.

Estimated Time per Response: 3 hours 0 minutes.

Estimated Total Annual Burden Hours: 1,000 hours.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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.

Dated: March 25, 2020.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–06597 Filed 3–30–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–73–2019]

Foreign-Trade Zone (FTZ) 18—San Jose, California; Authorization of Production Activity; Tesla, Inc. (Electric Passenger Vehicles and Components), Fremont, Livermore, and Oakland, California

On November 26, 2019, Tesla, Inc. submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 18G, in Fremont, Livermore, and Oakland, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 66651, December 5, 2019). On March 25, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 25, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–06637 Filed 3–30–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2094]

Approval of Subzone Status; Frank's International, LLC, New Iberia and Lafayette, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Port of South Louisiana, grantee of Foreign-Trade Zone 124, has made application to the Board for the establishment of a subzone at the facilities of Frank's International, LLC, located in New Iberia and Lafayette, Louisiana (FTZ Docket B–69–2019, docketed October 29, 2019);

Whereas, notice inviting public comment has been given in the **Federal Register** (84 FR 59351–59352, November 4, 2019) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facilities of Frank's International, LLC, located in New Iberia and Lafayette, Louisiana (Subzone 124U), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: March 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2020–06636 Filed 3–30–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–106]

Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Corrected Notice of Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: On February 28, 2020, the Department of Commerce (Commerce) published its final determination in the sales at less-than-fair-value investigation of wooden cabinets and vanities and components thereof from the People's Republic of China (China). However, the notice was not printed in the **Federal Register** as Commerce intended. This notice corrects the resultant punctuation errors in company names that occurred in the publication.

DATES: Applicable March 31, 2020.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg, 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) 482–0652.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2020, Commerce published the *Final Determination.*[1] However, the **Federal Register** notice stating the names of the producer-exporter combination rates was not printed as Commerce intended. Various company names contained inadvertent punctuation errors. Commerce is hereby correcting the *Final Determination* to include the correct punctuation in certain company names.

Scope of the Investigation

The scope of this investigation has not changed from that stated in the *Final Determination.*

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[1] *See Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 85 FR 11953 (February 28, 2020) (*Final Determination*), and accompanying Issues and Decision Memorandum.

Correction to Final Determination

The corrected producer-exporter combination rates are as follows:

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

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
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
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

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
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
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

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
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
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

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
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
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	48.5	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.FF0C;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

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
YEKALON INDUSTRY, INC	Oriental Chic Furniture Company Limited	48.50	37.96
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 PRODUCT LTD	48.50	37.96
ZIEL INTERNATIONAL CO., LIMITED	Nantong Jon Ergonomic Office Co., Ltd	48.50	37.96
China-Wide Entity		262.18	251.64

Suspension of Liquidation

Suspension of liquidation and cash deposit rates for all producers and exporters of subject merchandise from China are unaffected by this correction notice. Refer to the *Final Determination* for the suspension instructions in effect at the time of the issuance of this notice.

Public Comment

Commerce is not accepting public comments in response to this corrected final determination.

International Trade Commission Notification

In accordance with section 735(d) of the Act, Commerce will notify the International Trade Commission of this correction notice.

Notification to Interested Parties

This corrected final determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.210(c).

Dated: March 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–06645 Filed 3–30–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–907]

Ultra-High Molecular Weight Polyethylene From the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation

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

DATES: Applicable March 24, 2020.

FOR FURTHER INFORMATION CONTACT: Darla Brown or Ian Hamilton, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1791 or (202) 482–4798, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 4, 2020, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of ultra-high molecular weight polyethylene (ultra-high polyethylene) from the Republic of Korea (Korea), filed in proper form on behalf of Celanese Corporation (the petitioner).[1]

On March 6 and 12, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition.[2] On March 10 and 16, 2020, respectively, the petitioner filed its responses to these supplemental questionnaires.[3]

In accordance with section 732(b) of the Act, the petitioner alleges that imports of ultra-high polyethylene from Korea are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing ultra-high polyethylene in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegation.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined by section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested AD investigation.[4]

Period of Investigation

Because the Petition was filed on March 4, 2020, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is January 1, 2019 through December 31, 2019.

Scope of the Investigation

The product covered by this investigation is ultra-high molecular weight polyethylene from Korea. For a full description of the scope of this investigation, *see* the appendix to this notice.

Comments on the Scope of the Investigation

During our review of the Petition, we contacted the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.[5] The description of the merchandise covered by this investigation, as described in the appendix to this notice, reflects these clarifications.

Consistent with the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[6] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[7] all such factual information should be limited to public information. To facilitate preparation of its questionnaire, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on April 13, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on April 23, 2020, which is 10 calendar days from the initial comment deadline.[8]

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[9] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of ultra-high polyethylene to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics.

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[1] *See* Petitioner's Letter, ''Petitioners for the Imposition of Antidumping Duties: Ultra-High Molecular Weight Polyethylene from South Korea,'' dated March 3, 2020 (Petition). The Petition was filed with Commerce and the U.S. International Trade Commission (ITC) on March 3, 2020, after 12:00 noon, and pursuant to 19 CFR 207.10(a), is deemed to have been filed with the ITC on the next business day, March 4, 2020. Because section 732(b)(2) of the Tariff Act of 1930, as amended (the Act), requires simultaneous filing of the Petition with Commerce and the ITC, Commerce deemed the Petition to have been filed with Commerce on March 4, 2020. *See* Memorandum, ''Decision Memorandum Concerning the Filing Date of the Petition,'' dated March 9, 2020.

[2] *See* Commerce's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Supplemental Questions,'' dated March 6, 2020 (Supplemental Questionnaire); and Memorandum, ''Additional Supplemental Questions Regarding Antidumping Duty Petition,'' dated March 12, 2020 (Second Supplemental Questionnaire).

[3] *See* Petitioner's Letter, ''Petitioners {sic} for the Imposition of Antidumping Duties on Imports of Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Supplemental Questions,'' dated March 10, 2020 (Petition Supplement); and Petitioner's Letter, ''Petitioners {sic} for the Imposition of Antidumping Duties on Imports of Ultra-High Molecular Weight Polyethylene from the Republic of Korea: Additional Supplemental Questions,'' dated March 16, 2020 (Petition Second Supplement).

[4] *See infra,* section on ''Determination of Industry Support for the Petition;'' Antidumping Duty Initiation Checklist: Ultra-High Polyethylene from the Republic of Korea (Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering Ultra-High Polyethylene from the Republic of Korea (Attachment II).

[5] *See* Supplemental Questionnaire and Second Supplemental Questionnaire; Petition Supplement at Exhibit GEN–SUP–11; and Petition Second Supplement at Exhibit GEN–2SUP–1.

[6] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[7] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[8] *See* 19 CFR 351.303(b).

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe ultra-high polyethylene, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all product characteristics comments must be filed by 5:00 p.m. ET on April 13, 2020, which is 20 calendar days from the signature date of this notice.[10] Any rebuttal comments must be filed by 5:00 p.m. ET on April 23, 2020. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The ITC, which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.[13] Based on our analysis of the information submitted on the record, we have determined that ultra-high polyethylene, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the appendix to this notice. To establish domestic production, the petitioner provided its own production of the domestic like product in 2019, as well as estimated 2019 effective total U.S. production capacity of the only other known producer of domestic like product.[15] To establish industry support, the petitioner compared its production to the estimated total production of the domestic like product for the entire domestic industry.[16] We relied on data provided by the petitioner for purposes of measuring industry support.[17]

Our review of the data provided in the Petition, the General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[18] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[21] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.[22]

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by

[10] *See* 19 CFR 351.303(b).

[11] *See* section 771(10) of the Act.

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F. 2d 240 (Fed. Cir. 1989)).

[13] *See* Volume I of the Petition at 14–18 and Exhibits GEN–12 and GEN–18.

[14] For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Initiation Checklist at Attachment II.

[15] *See* Volume I of the Petition at 6–7 and Exhibit GEN–2; *see also* Petition Supplement at 2–5 and Exhibits GEN–SUP–2 through GEN–SUP–7, and GEN–SUP–10; and Second Petition Supplement at 1.

[16] *Id.*

[17] *Id.* For further discussion, *see* Initiation Checklist at Attachment II.

[18] *Id.*

[19] *See* section 732(c)(4)(D) of the Act; *see also* Initiation Checklist at Attachment II.

[20] *See* Initiation Checklist at Attachment II.

[21] *Id.*

[22] *Id.*

reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[23]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and declining financial performance.[24] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[25]

Allegations of Sales at LTFV

The following is a description of the allegations of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of imports of ultra-high polyethylene from Korea. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the Initiation Checklist.

Export Price

The petitioner based export price (EP) on the average unit values (AUVs) of the official U.S. import statistics obtained from the ITC's Dataweb (Dataweb). The petitioner made deductions from these AUVs for foreign inland freight expenses. The petitioner also based EP on an offer for sale from Korea Petrochemical Industry Corporation (KPIC) to a customer of the petitioner. The petitioner made deductions from this offer for sale for foreign inland freight expenses, foreign brokerage and handling charges, ocean freight expenses, marine insurance expenses, merchandise processing fees, U.S. brokerage and handling charges, and U.S. inland freight expenses.[26]

Normal Value [27]

The petitioner based NV on home market price quotes obtained through market research for ultra-high polyethylene produced in and sold, or offered for sale, in Korea within the POI.[28] The petitioner deducted foreign inland freight expenses from the home market prices.[29]

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of ultra-high polyethylene from Korea are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margins for ultra-high polyethylene from Korea range from 13.16 to 153.35 percent.[30]

Initiation of LTFV Investigation

We find that the Petition and supplemental responses meet the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of ultra-high polyethylene from Korea are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Respondent Selection

Although Commerce normally relies on import data from using U.S. Customs and Border Protection import statistics to determine whether to select a limited number of producers/exporters for individual examination in AD investigations, the petitioner identified only one company in Korea, *i.e.,* KPIC, as a producer/exporter of ultra-high polyethylene and provided independent, third-party information as support.[31] We currently know of no additional producers/exporters of ultra-high polyethylene from Korea. Accordingly, Commerce intends to examine all known Korean producers/exporters (*i.e.,* KPIC). We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety via ACCESS by 5:00 p.m. ET on the specified deadline.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the Government of Korea via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of ultra-high polyethylene from Korea are materially injuring, or threatening material injury to, a U.S. industry.[32] A negative ITC determination will result in the investigation being terminated.[33] Otherwise, this AD investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [34] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information

[23] *See* Volume I of the Petition at 19 and Exhibit GEN–8; *see also* Petition Supplement at 5.

[24] *See* Volume I of the Petition at 20–22 and Exhibits GEN–9 and GEN–10; *see also* Petition Supplement at 5–7 and Exhibit GEN–SUP–9.

[25] *See* Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering Ultra-High Molecular Weight Polyethylene from the Republic of Korea.

[26] *See* Initiation Checklist at 6–8.

[27] In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for this investigation, Commerce will request information necessary to calculate the constructed value and cost of production (COP) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. Commerce no longer requires a COP allegation to conduct this analysis.

[28] *See* Initiation Checklist at 6–8.

[29] *Id.*

[30] *Id.*

[31] *See* Volume I of the Petition at 12 and Exhibit GEN–15, Volume II of the Petition at 4 and Exhibit AD–II–1; *see also* Petition Supplement at Exhibit AD–II–SUP–13.

[32] *See* section 733(a) of the Act.

[33] *Id.*

[34] *See* 19 CFR 351.301(b).

seeks to rebut, clarify, or correct.[35] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[36] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) sets a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or countervailing duty proceeding must certify to the accuracy and completeness of that information.[37] Parties must use the certification formats provided in 19 CFR 351.303(g).[38] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under Administrative Protective Order (APO) in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: March 24, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by the scope is ultra-high molecular weight polyethylene. Ultra-high molecular weight polyethylene is a linear polyethylene, in granular or powder form. It is defined by its melt mass-flow rate of <0.1 g/10 min, measured at 190 °C and 21.6 kg load, based on the methods and calculations set forth in the International Organization for Standardization (ISO) standards 21304–1 and 21304–2. Ultra-high molecular weight polyethylene has a Chemical Abstract Service (CAS) registry number of 9002–88–4.

The scope includes all ultra-high molecular weight polyethylene in granular or powder forms meeting the above specifications regardless of additives introduced in the manufacturing process. Ultra-high molecular weight polyethylene blended with other products is included in the scope of this investigation where ultra-high molecular weight polyethylene accounts for more than 50 percent, by actual weight, of the blend and the resulting blend maintains a melt mass-flow rate of <0.1 g/10 min.

Excluded from the scope of the investigation is medical-grade ultra-high molecular weight polyethylene. Medical grade ultra-high molecular weight polyethylene has a minimum viscosity of 2,000 ml/g at a concentration of 0.02% at 135 °C (275 °F) in decahydronaphthalene and an elongational stress of 0.2 MPa or greater. Medical-grade ultra-high molecular weight polyethylene is further defined by its ash and trace element content, which shall not exceed the following maximum quantities as set forth in ISO–5834–1: ash (125 mg/kg), titanium (40 mg/kg), calcium (5 mg/kg), chlorine (30 mg/kg), and aluminum (20 mg/kg). ISO 5834–1 further defines medical grade ultra-high molecular weight polyethylene by its particulate matter content, which requires that there shall be no more than three particles of contaminant per 300 ± 20 g tested. Each of the above criteria is calculated based on the standards and methods used in ISO 5834–1.

Ultra-high molecular weight polyethylene is classifiable under the HTSUS subheadings 3901.10.1000 and 3901.20.1000. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2020–06589 Filed 3–30–20; 8:45 am]

BILLING CODE 3510–DS–P

[35] *See* 19 CFR 351.301(b)(2).

[36] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[37] *See* section 782(b) of the Act.

[38] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–814, A–580–899, A–791–824]

Acetone From Belgium, the Republic of South Africa, and the Republic of Korea: Antidumping Duty Orders

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing antidumping duty orders on acetone from Belgium, the Republic of South Africa (South Africa), and the Republic of Korea (Korea).

DATES: Applicable March 31, 2020.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla at (202) 482–4956 (Belgium), Caitlin Monks (202) 482–2670 (South Africa), or Sean Carey at (202) 482–3964 (Korea), 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

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on February 13, 2020, Commerce published its affirmative final determinations in the less-than-fair-value (LTFV) investigations of acetone from Belgium, South Africa, and Korea.[1] On March 17, 2020, the ITC notified Commerce of its final affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of acetone from Belgium, South Africa, and Korea.[2]

Scope of the Orders

The merchandise covered by these orders is acetone from Belgium, Korea, and South Africa. For a complete description of the scope of the orders, *see* the Appendix to this notice.

Antidumping Duty Orders

On March 17, 2020, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured by reason of imports of acetone from Belgium, Korea, and South Africa.[3] Therefore, in accordance with sections 735(c)(2) and 736 of the Act, Commerce is issuing these antidumping duty orders. Because the ITC determined that imports of acetone from Belgium, Korea, and South Africa are materially injuring a U.S. industry, unliquidated entries of such merchandise from Belgium, Korea, and South Africa, which are entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

As a result of the ITC's final affirmative determinations, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise, for all relevant entries of acetone from Belgium, Korea, and South Africa. Antidumping duties will be assessed on unliquidated entries of acetone from Belgium, Korea, and South Africa entered, or withdrawn from warehouse, for consumption on or after September 24, 2019, the date of publication of the *Preliminary Determinations,*[4] but will not include entries occurring after the expiration of the provisional measures period and before publication in the **Federal Register** of the ITC's injury determination, as further described below.

Suspension of Liquidation

In accordance with section 736 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of subject merchandise (*i.e.,* acetone from Belgium, Korea, and South Africa), effective on the date of publication of the ITC final determinations in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 736(a)(1) of the Act, antidumping duties for each entry of the subject merchandise equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise, adjusted by the amount of export subsidies, where appropriate. We intend to instruct CBP to require, at the same time as importers would normally deposit estimated import duties on this merchandise, cash deposits for each entry of subject merchandise equal to the estimated weighted-average dumping margins listed below. These instructions suspending liquidation will remain in effect until further notice. The all-others rates apply to all other producers or exporters not specifically listed.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins for each antidumping duty order are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Belgium	
INEOS Europe AG/INEOS Phenol Belgium NV	28.10
All Others	28.10
Korea	
Kumho P&B Chemicals, Inc	47.86
LG Chem, Ltd	25.05
All Others	33.10
South Africa	
Sasol South Africa Limited	414.92
All Others	314.51

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except that Commerce may extend the four-month period to no more than six months at the request of exporters representing a significant proportion of exports of the subject merchandise. Commerce's *Preliminary Determinations* were published on September 24, 2019.[5] In the *Preliminary Determinations,* Commerce postponed the Final Determinations, and extended

[1] *See Acetone from Belgium: Final Determination of Sales at Less Than Fair Value,* 85 FR 8249 (February 13, 2020); *see also Acetone from the Republic of South Africa: Final Determination of Sales at Less Than Fair Value,* 85 FR 8247 (February 13, 2020); and *Acetone from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 85 FR 8252 (February 13, 2020) (collectively, *Final Determinations*).

[2] *See* ITC's Letter dated March 17, 2020 (ITC Notification Letter).

[3] *See* ITC Notification Letter.

[4] *See Acetone from Belgium: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 84 FR 49999 (September 24, 2019); *see also Acetone from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 84 FR 50005 (September 24, 2019); and *Acetone from the Republic of South Africa: Preliminary Affirmative Determination of Sales and Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 84 FR 49984 (September 24, 2019) (collectively, *Preliminary Determinations*).

[5] *See Preliminary Determinations.*

the provisional measures period to six months. Commerce's *Final Determinations* were published on February 13, 2020.[6] As such, the six-month period beginning on the date of publication of the *Preliminary Determinations* ends on March 22, 2020.

Therefore, in accordance with section 733(d) of the Act, Commerce instructed CBP to terminate the suspension of liquidation, and to liquidate, without regard to antidumping duties, unliquidated entries of acetone from Belgium, Korea, and South Africa entered or withdrawn from warehouse for consumption after March 22, 2020, the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**.

Notification to Interested Parties

This notice constitutes the antidumping duty orders with respect to acetone from Belgium, Korea, and South Africa, pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: March 25, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix—Scope of the Orders

The merchandise covered by these orders is all grades of liquid or aqueous acetone. Acetone is also known under the International Union of Pure and Applied Chemistry (IUPAC) name propan-2-one. In addition to the IUPAC name, acetone is also referred to as β-ketopropane (or beta-ketopropane), ketone propane, methyl ketone, dimethyl ketone, DMK, dimethyl carbonyl, propanone, 2-propanone, dimethyl formaldehyde, pyroacetic acid, pyroacetic ether, and pyroacetic spirit. Acetone is an isomer of the chemical formula C_3H_6O, with a specific molecular formula of CH_3COCH_3 or $(CH_3)_2CO$.

The scope covers both pure acetone (with or without impurities) and acetone that is combined or mixed with other products, including, but not limited to, isopropyl alcohol, benzene, diethyl ether, methanol, chloroform, and ethanol. Acetone that has been combined with other products is included within the scope, regardless of whether the combining occurs in third countries.

[6] *See Final Determinations.*

The scope also includes acetone that is commingled with acetone from sources not subject to these orders.

For combined and commingled products, only the acetone component is covered by the scope of these orders. However, when acetone is combined with acetone components from sources not subject to this investigation, those third country acetone components may still be subject to other acetone orders.

Notwithstanding the foregoing language, an acetone combination or mixture that is transformed through a chemical reaction into another product, such that, for example, the acetone can no longer be separated from the other products through a distillation process (*e.g.,* methyl methacrylate (MMA) or Bisphenol A (BPA)), is excluded from these orders.

A combination or mixture is excluded from these orders if the total acetone component (regardless of the source or sources) comprises less than 5 percent of the combination or mixture, on a dry weight basis.

The Chemical Abstracts Service (CAS) registry number for acetone is 67–64–1.

The merchandise covered by these orders is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 2914.11.1000 and 2914.11.5000. Combinations or mixtures of acetone may enter under subheadings in Chapter 38 of the HTSUS, including, but not limited to, those under heading 3814.00.1000, 3814.00.2000, 3814.00.5010, and 3814.00.5090. The list of items found under these HTSUS subheadings is non-exhaustive. Although these HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[FR Doc. 2020–06639 Filed 3–30–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR107]

Marine Mammals; File No. 23807

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Plimsoll Productions Limited, 51—55 Whiteladies Road, Bristol, BS8 2LY, United Kingdom (Responsible Party: Anuschka Schofield), has applied in due form for a permit to conduct commercial or educational photography on bottlenose dolphins (*Tursiops truncatus*).

DATES: Written, telefaxed, or email comments must be received on or before April 30, 2020.

ADDRESSES: These documents are 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: Erin Markin or Carrie Hubard, (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.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to obtain footage of bottlenose dolphins (Charleston Estuarine System Stock) in waters around Charleston County, South Carolina, including Kiawah and Folly Islands, for a wildlife documentary series that reveals the unique behaviors and adaptations that set different families of animals apart. Up to 630 bottlenose dolphins may be filmed from land, vessel, or unmanned aircraft systems, annually. Underwater video and vocalizations may be recorded using an underwater pole camera. The permit would expire on December 31, 2024.

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: March 25, 2020.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–06601 Filed 3–30–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee Meeting; Modification

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

ACTION: Notice of Federal Advisory Committee meeting; modification.

SUMMARY: On February 26, 2020, the DoD published a notice to announce the April 1, 2020 meeting of the Uniform Formulary Beneficiary Advisory Panel. On March 9, 2020, the DoD published a notice that announced that the meeting time had changed. DoD is publishing this notice to announce that this federal advisory committee meeting has been modified to a remote access format.

DATES: Open to the public Wednesday, April 1, 2020 from 12:00 p.m. to 3:00 p.m.

ADDRESSES: The address of the open meeting will be online. The phone number for the remote access is: CONUS: 888–469–2037; OCONUS: 1–517–308–9287; PARTICIPANT CODE: 8227323. These numbers and the dial-in instructions will also be posted on the Uniform Formulary Beneficiary Advisory Panel website at: *https://www.health.mil/About-MHS/OASDHA/Defense-Health-Agency/Operations/Pharmacy-Division/Beneficiary-Advisory-Panel*.

FOR FURTHER INFORMATION CONTACT: Colonel Paul J. Hoerner, USAF, 703–681–2890 (Voice), None (Facsimile), *dha.ncr.j-6.mbx.baprequests@mail.mil* (Email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Website: *https://www.health.mil/About-MHS/OASDHA/Defense-Health-Agency/Operations/Pharmacy-Division/Beneficiary-Advisory-Panel*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense, the Designated Federal Officer for the Uniform Formulary Beneficiary Advisory Panel was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the modification of the previously noticed meeting for April 1, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

On February 26, 2020 (85 FR 11053–11054), the Department of Defense published a notice that announced an April 1, 2020 meeting of the Uniform Formulary Beneficiary Advisory Panel. On March 9, 2020 (85 FR 13636), the DoD published a notice that announced that the meeting time had changed. DoD is publishing this notice to announce that this federal advisory committee meeting has been modified to a remote access format.

Written Statements: Pursuant to 41 CFR 102–3.10, and section 10(a)(3) of FACA, interested persons or organizations may submit written statements to the Uniform Formulary Beneficiary Advisory Panel about its mission and/or the agenda to be addressed in this public meeting. Written statements should be submitted to the Uniform Formulary Beneficiary Advisory Panel's DFO. The DFO's contact information can be found in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Written comments or statements must be received by the Uniform Formulary Beneficiary Advisory Panel's DFO at least five (5) business days prior to the meeting so they may be made available to the Uniform Formulary Beneficiary Advisory Panel for its consideration prior to the meeting. The Designated Federal Officer will review all submitted written statements and provide copies to all Uniform Formulary Beneficiary Advisory Panel members.

Dated: March 26, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–06690 Filed 3–30–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–49–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Schedule for Environmental Review of a Proposed Amendment of the Northeast Supply Enhancement Project

On January 31, 2020, Transcontinental Pipe Line Company, LLC (Transco) filed an application in Docket No. CP20–49–000 requesting to amend the Certificate of Public Convenience and Necessity granted by the Federal Energy Regulatory Commission (Commission or FERC) for the Northeast Supply Enhancement Project on May 3, 2019, in Docket No. CP17–101–000. Transco's proposed amendment involves utilizing an alternative road for permanent access to Compressor Station 206 in Somerset County, New Jersey, rather than constructing the previously approved access road to the site.

On February 5, 2020, the Commission issued its Notice of Application for the proposed amendment. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the project. This instant notice identifies the FERC staff's planned schedule for the completion of an Environmental Assessment (EA) for the proposed amendment.

Schedule for Environmental Review

Issuance of EA—May 15, 2020

90-day Federal Authorization Decision Deadline—August 13, 2020

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of project progress.

Project Description

Transco proposes to amend the Northeast Supply Enhancement Project to utilize an alternative permanent access road to Compressor Station 206 (referred to as the Higgins Farm Access Road) that would involve the use and extension of an existing road rather than construction of the previously approved access road across property owned by Trap Rock Industries (referred to as the Trap Rock Access Road). Transco states the proposal would enable it to comply with requirements from the New Jersey Department of Environmental Protection and reduce wetland impacts. The existing road crosses the Higgins Farm Superfund Site for approximately 1,819 feet, terminating at an enclosed groundwater remediation system operated by the U.S. Environmental Protection Agency. Transco would not modify the existing road, but would extend the road approximately 1,213 feet to the compressor station site. Approximately 331 feet of the extension would occur on the Higgins Farm Superfund Site and the remaining 882 feet would occur on land owned by Transco.

Background

On February 19, 2020, the Commission issued a *Notice of Intent to Prepare an Environmental Document for a Proposed Amendment of the Northeast Supply Enhancement Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received one comment letter related to the Higgins Farm Access Road from the Eastern Environmental Law Center. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP20–49), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: March 25, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–06672 Filed 3–30–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–495–000]

Double E Pipeline, LLC; Notice of Availability of the Environmental Assessment for the Proposed Double E Pipeline Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Double E Pipeline Project (Project), proposed by Double E Pipeline, LLC (Double E) in the above-referenced docket. Double E filed an application in Docket No. CP19–495–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. Double E requests authorization to construct and operate approximately 135 combined miles of varying diameter trunk-lines and lateral pipeline connecting the Delaware Basin production areas in New Mexico and Texas to the Waha Hub. The proposed trunkline and lateral pipelines run through Eddy County, New Mexico and Loving, Ward, Reeves, and Pecos Counties, Texas.

The EA assesses the potential environmental effects of the construction and operation of the Double E Pipeline Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Department of Interior Bureau of Land Management (BLM) participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The BLM will adopt and use the EA to issue a Right-of-Way Grant and Temporary Use Permits for the portion of the Project on federal lands.

The proposed Double E Pipeline Project includes the following facilities:

- Approximately 33.3 miles of new 30-inch-diameter T100 pipeline from Summit Midstream Partners, LP's existing Lane Processing Plant located in Eddy County, New Mexico, to the proposed Poker Lake Meter Station site, also in Eddy County;
- 84.2 miles of new 42-inch-diameter T200 pipeline from the proposed Poker Lake Meter Station in Eddy County, New Mexico through Loving, Ward, and Reeves Counties, Texas and terminating at the proposed Waha Receiver and Separation site in Reeves County, Texas;
- 1.4 miles of new 42-inch-diameter T300 pipeline from the proposed Double E Waha Receiver and Separation site in Reeves County, Texas to the final delivery locations in Pecos County, Texas; and
- 16.4 miles of new 30-inch-diameter L100 pipeline from the existing Loving Processing Plants to the proposed T100 pipeline in Eddy County, New Mexico.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.* CP19–495). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on April 23, 2020.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on eRegister. You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19–495–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: March 24, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–06675 Filed 3–30–20; 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: RP20–676–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Filing—Mercuria Energy America to be effective 4/1/2020.
Filed Date: 3/24/20.
Accession Number: 20200324–5007.
Comments Due: 5 p.m. ET 4/6/20.

Docket Numbers: RP20–677–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedules LSS and SS–2 Tracker Filing eff 4/1/2020 to be effective 4/1/2020.
Filed Date: 3/24/20.
Accession Number: 20200324–5025.
Comments Due: 5 p.m. ET 4/6/20.

Docket Numbers: RP20–678–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Fuel Tracker Filing—Effective May 1, 2020 to be effective 5/1/2020.
Filed Date: 3/24/20.
Accession Number: 20200324–5028.
Comments Due: 5 p.m. ET 4/6/20.

Docket Numbers: RP20–679–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing (Hartree Partners) filed on 3–24–20 to be effective 4/1/2020.
Filed Date: 3/24/20.
Accession Number: 20200324–5096.
Comments Due: 5 p.m. ET 4/6/20.

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: March 25, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–06673 Filed 3–30–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–48–000]

Iroquois Gas Transmission System, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Enhancement by Compression Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Enhancement by Compression Project involving construction and operation of facilities by Iroquois Gas Transmission System, L.P. (Iroquois) in Greene and Dutchess Counties, New York, and Fairfield and New Haven Counties, Connecticut. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of

Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00pm Eastern Time on April 24, 2020.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on February 3, 2020, you will need to file those comments in Docket No. CP20–48–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Iroquois provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP20–48–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Iroquois proposes to upgrade existing compressor stations in New York and Connecticut. The Enhancement by Compression Project would provide about 62.5 million cubic feet of natural gas per day from Waddington to Hunts Point, New York for Consolidated Edison Company of New York, Inc. and 62.5 million cubic feet of natural gas per day from Waddington, to South Commack, New York for KeySpan Gas East Corporation doing business as National Grid. According to Iroquois, Con Edison and National Grid both have experienced demand growth on their distribution systems due to new construction in the commercial and multi-family sectors and to meet requests for lower emitting fuels to replace heating oil.

The Enhancement by Compression Project would consist of the following facilities:

- Athens Compressor Station—installation of one new approximately 12,000 horsepower (hp) turbine (Unit A2) with associated cooling, filter separators, and other facilities connecting to Iroquois' existing 24-inch-diameter mainline in the Town of Athens, Greene County New York.
- Dover Compressor Station—installation of one new approximately 12,000 hp turbine (Unit A2) with associated cooling, filter separators, and other facilities connecting to Iroquois' existing 24-inch-diameter mainline in the Town of Dover, Dutchess County New York.
- Brookfield Compressor Station—construction of a control/office building, addition of two new turbines with approximately 12,000 hp each (Unit B1 & Unit B2) with associated cooling, filter separators, and other typical facilities connecting to Iroquois' existing 24-inch-diameter mainline at Brookfield, to be installed downstream and independent of Iroquois' existing transfer compressors Unit-A1 (Solar T–60) and Unit-A2 (Solar T–70). Additionally, Iroquois would install incremental cooling at Plant 2–A to allow for compressed discharge gas to be cooled, prior to being compressed at the proposed downstream compressors (Units B1 and B2). Iroquois would also replace existing turbine stacks on Unit-A1 and Unit-A2 and add other noise reduction measures (*e.g.,* louvers, seals) to minimize existing noise at the site. The compressor station is in the Town of Brookfield, Fairfield County, Connecticut.
- Milford Compressor Station—addition of gas cooling to existing compressor units and associated piping to allow for compressed discharge gas to be cooled. Currently, no gas cooling facilities exist at this station. The compressor station is in the City of Milford, New Haven County, Connecticut.

The general location of the project facilities is shown in appendix 1.

Land Requirements for Construction

Construction of the proposed modifications would disturb about 43.8 acres of land at the existing compressor stations. Following construction, Iroquois would maintain about 13.3 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. All construction would occur on Iroquois-owned properties.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary [1] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[2] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

Commission staff have already identified several issues that deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Iroquois. This preliminary list of issues may change based on your comments and our analysis.

- Air;
- noise;
- safety; and
- climate change.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number in the Docket Number field, excluding the last three digits (*i.e.,* CP20–48). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: March 25, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–06674 Filed 3–30–20; 8:45 am]

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[1] For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–48–000.
Applicants: Oliver Wind II, LLC, FPL Energy Oliver Wind II, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of FPL Energy Oliver Wind II, LLC, et al.
Filed Date: 3/24/20.
Accession Number: 20200324–5190.
Comments Due: 5 p.m. ET 4/14/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–1314–004.

Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Errata to Compliance Filing in Docket No. ER18–1314–003 to be effective N/A.
Filed Date: 3/25/20.
Accession Number: 20200325–5136.
Comments Due: 5 p.m. ET 4/15/20.

Docket Numbers: ER18–1667–006.
Applicants: Antelope Expansion 2, LLC.
Description: Supplemental Notice of Non-Material Change in Status to March 6, 2020 Notice of Passive Ownership Interest of Antelope Expansion 2, LLC.
Filed Date: 3/24/20.
Accession Number: 20200324–5165.
Comments Due: 5 p.m. ET 4/14/20.

Docket Numbers: ER19–1940–002.
Applicants: Gulf Power Company.
Description: Compliance filing: Order No. 845 Compliance Filing to be effective 5/22/2019.
Filed Date: 3/24/20.
Accession Number: 20200324–5123.
Comments Due: 5 p.m. ET 4/14/20.

Docket Numbers: ER20–1370–000.
Applicants: Idaho Power Company.
Description: Supplement to March 23, 2020 Idaho Power Company tariff filing (Revised effective date to be 5/26/2020).
Filed Date: 3/24/20.
Accession Number: 20200324–5188.
Comments Due: 5 p.m. ET 4/14/20.

Docket Numbers: ER20–1376–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits Revised Interconnection Agreement (IA) SA No. 3994 to be effective 5/23/2020.
Filed Date: 3/24/20.
Accession Number: 20200324–5112.
Comments Due: 5 p.m. ET 4/14/20.

Docket Numbers: ER20–1377–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–03–25_SA 3453 Ameren Illinois-Dressor Plains Solar GIA (J811) to be effective 3/11/2020.
Filed Date: 3/25/20.
Accession Number: 20200325–5030.
Comments Due: 5 p.m. ET 4/15/20.

Docket Numbers: ER20–1378–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: Revised DEF–RCID NITSA (SA No. 147) to be effective 3/1/2020.
Filed Date: 3/25/20.
Accession Number: 20200325–5033.
Comments Due: 5 p.m. ET 4/15/20.

Docket Numbers: ER20–1379–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Second Revised ISA, SA No. 4776; Queue No. AB1–014/AC2–066/AE1–120 to be effective 2/26/2020.
Filed Date: 3/25/20.
Accession Number: 20200325–5057.
Comments Due: 5 p.m. ET 4/15/20.

Docket Numbers: ER20–1380–000.
Applicants: Evergy Kansas Central, Inc.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule No. 321, City of Arma, Kansas to be effective 6/1/2020.
Filed Date: 3/25/20.
Accession Number: 20200325–5076.
Comments Due: 5 p.m. ET 4/15/20.

Docket Numbers: ER20–1381–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, Service Agreement No. 4438; Queue No. AC2–140 to be effective 3/3/2020.
Filed Date: 3/25/20.
Accession Number: 20200325–5081.
Comments Due: 5 p.m. ET 4/15/20.

Docket Numbers: ER20–1382–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE's Revision to Formula Rate Tariff Authorized 2020 PBOPs Expense Amount to be effective 1/1/2020.
Filed Date: 3/25/20.
Accession Number: 20200325–5125.
Comments Due: 5 p.m. ET 4/15/20.

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: March 25, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–06671 Filed 3–30–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10007–51–OA]

Notification of a Public Meeting of the Science Advisory Board Economic Guidelines Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Science Advisory Board Economic Guidelines Review Panel. The purpose of the meeting is to receive an agency briefing, review charge questions and hear public comments for the EPA's revised document titled ''Guidelines for Preparing Economic Analyses.''

DATES: The public teleconference will be held on April 23, 2020, from 11:00 a.m. to 3:00 p.m. (Eastern Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Shaunta Hill-Hammond, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; via telephone/voice mail (202) 564–3343, or email at *hill-hammond.shaunta@epa.gov.* General information about the SAB, as well as any updates concerning the meeting announced in this notice can be found on the SAB website at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board Economic Guidelines Review Panel will hold a public meeting to receive a briefing from the agency, discuss charge questions and hear public comments for the EPA's revised document titled ''Guidelines for Preparing Economic

Analyses.'' The purpose of the document is to define and describe best practices for economic analysis grounded in the economics literature. It also describes Executive Orders and other documents that impose analytic requirements and provides detailed information on selected important topics for economic analyses.

Availability of Meeting Materials: All meeting materials, including the agenda will be available prior to the meetings on the SAB web page at *http://epa.gov/sab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instruction below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted above, to be placed on the list of registered speakers by April 15, 2020.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be received in the SAB Staff Office by April 15, 2020 Written statements should be supplied to the DFO at the contact information above via email (preferred) or in hard copy with original signature. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

V. Khanna Johnston,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2020–06658 Filed 3–30–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0547; FRL—10006–22–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Performance Evaluation Studies on Wastewater Laboratories (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Performance Evaluation Studies on Wastewater Laboratories (EPA ICR Number 0234.13, OMB Control Number 2080–0021) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2020. Public comments were previously requested via the **Federal Register** on October 9, 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 April 30, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0547, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Gregory Savitske, 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) 564–2601; fax number: (202) 564–0050; email address: *savitske.gregory@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: Discharge Monitoring Report-Quality Assurance (DMR–QA) study program participation is mandatory for major and selected minor National Pollutant Discharge Elimination System (NPDES) permit holders in accordance with Clean Water Act Section 308. The DMR–QA study program is designed to evaluate the analytic ability of laboratories that perform chemical, microbiological and whole effluent toxicity (WET) analyses required in NPDES permits for reporting results in the Discharge Monitoring Reports (DMR). Under DMR–QA, the permit holder is responsible for having their in-house and/or contract laboratories analyze performance evaluation samples and submit results to proficiency testing (PT) providers for grading. Graded results are transmitted by either the permit holder or PT provider to the appropriate federal or state NPDES permitting authority. Permit holders are responsible for submitting corrective action reports to the appropriate permitting authority.

Form Numbers: EPA Form 6400–01.

Respondents/affected entities: Major and selected minor permit holders under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES).

Respondent's obligation to respond: Mandatory under Clean Water Act Section 308(a).

Estimated number of respondents: 5,500 (total).

Frequency of response: Annually, On occasion.

Total estimated burden: 36,300 hours (per year) hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $5,368,055 (per year), includes $3,375,790 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 1,320 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a slight decrease of NPDES major permit holders over the last three years. Non-labor costs for obtaining performance evaluation samples increased.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–06590 Filed 3–30–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2016–0094; FRL–10007–56–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Importation of On-Highway Vehicles and Nonroad Engines, Vehicles, and Equipment (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Importation of On-highway Vehicles and Motorcycles and Nonroad Engines, Vehicles, and Equipment (EPA ICR Number 2583.02, OMB Control Number 2060–0717) 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 current ICR, which is approved through July 31, 2020. Public comments were previously requested via the **Federal Register** on November 18, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 30, 2020.

ADDRESSES: Submit your comments referencing Docket ID No. EPA–HQ–OAR–2016–0094 to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *pugliese.holly@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode 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: Holly Pugliese, Compliance Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan, 48105; telephone number: 734–214–4288; fax number: 734–214–4869; email address: *pugliese.holly@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 Clean Air Act requires that on-highway vehicles and motorcycles, and nonroad vehicles, engines and equipment imported into the U.S. either comply with applicable emission requirements or qualify for an applicable exemption or exclusion. The Compliance Division (CD) in the EPA's Office of Air and Radiation maintains and makes available instruments to importers to help facilitate importation of products at U.S. Borders. EPA Form 3520–1 is used by importers of on-highway vehicles and motorcycles, and EPA Form 3520–21 is used by importers of nonroad vehicles, engines and equipment.

For most imports, U.S. Customs and Border Protection (CBP) regulations require that EPA Declaration Forms 3520–1 and 3520–21 be filed with CBP at the time of entry. EPA makes both forms available on our website in fillable PDF format (*http://www.epa.gov/importing-vehicles-and-engines/publications-and-forms-importing-vehicles-and-engines*). While EPA does not require that the forms be submitted directly to EPA, the forms are primarily used by CBP to facilitate the importation process at U.S. borders.

In 2016, CBP deployed the Automated Commercial Environment (ACE). ACE has become the primary system through which the trade community and other importers report imports and exports. Through ACE as the single point of submission, manual processes have been streamlined and automated, and paper submissions (*e.g.* fillable PDFs) have been significantly reduced. During the development of ACE, EPA worked with CBP to incorporate the information detailed on both EPA Declaration Forms 3520–1 and 3520–21 into ACE which effectively eliminates the forms as unique individual documents that are to be filled in and filed with CPB. Rather, importers will log into ACE and check boxes that correspond to information elements currently found on the forms. Filers using the ACE interface will also receive transaction information that will be kept by the filer. However, EPA will continue to maintain the forms on our website in fillable PDF format. Although importers are expected to use the ACE interface to submit information, the PDF versions of the form can also be submitted directly into ACE by importers.

EPA also makes available upon request EPA Form 3520–8 for on-highway vehicles. This form is used by independent commercial importers (ICIs) to request final admission of nonconforming vehicles.

Form Numbers: 3520–1, 3520–21, 3520–8.

Frequency of response: Once per entry. (One form per shipment may be used.)

Respondents/affected entities: Individual importers, or companies who import and/or manufacture on-highway vehicles and motorcycles and nonroad engines, vehicles, and equipment.

Respondent's obligation to respond: Required for any importer to legally import on-highway vehicles and motorcycles and nonroad engines, vehicles, and equipment into the U.S.

Estimated number of respondents: 14,810.

Total estimated burden: 81,985 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $4,244,699 (per year), includes $0 annualized capital or operation and maintenance costs.

Changes in Estimates: The increase in burden hours results from an increase in the estimated number of forms being filed. With the deployment of the ACE system, we are now able to have a much more accurate count of the number of forms that are being filed. There is a decrease in the burden costs because the only O&M costs associated with this ICR are incurred by ICIs during the required certification process, which is covered by 2060–0104. Therefore, with the renewal of this ICR, we are zeroing out the capital and O&M costs in this ICR. The burden totals have been updated accordingly.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–06634 Filed 3–30–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0077; FRL–10005–39–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Significant New Alternatives Policy (SNAP) Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Significant New Alternatives Policy (SNAP) Program (EPA ICR Number 1596.10, OMB Control Number 2060–0226) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act . This is a proposed extension of the ICR, which is currently approved through May 31, 2020. Public comments were previously requested via the **Federal Register** on September 25, 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 April 30, 2020.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2004–0077, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, 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: Christina Thompson, Stratospheric Protection Division, Office of Atmospheric Programs, (Mail Code 6205T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–0983; email address: *thompson.christina@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: Information collected under this rulemaking is necessary to implement the requirements of the Significant New Alternatives Policy (SNAP) program for evaluating and regulating substitutes for ozone-depleting substances (ODS) being phased out under the stratospheric ozone protection provisions of the Clean Air Act (CAA) and globally under the *Montreal Protocol on Substances that Deplete the Ozone Layer.* Under CAA Section 612, EPA is authorized to identify and restrict the use of substitutes for class I and class II ODS (listed in 40 CFR part 82, subpart A, appendices A and B) where EPA determines other alternatives are available or potentially available that reduce overall risk to human health and the environment. Any producer of a new substitute must submit a notice of intent to introduce a substitute into interstate commerce 90 days prior to such introduction. The producer must also provide EPA with information covering a wide range of health and environmental factors. The SNAP program, based on information collected from the manufacturers, formulators, and/or sellers of such substitutes, identifies acceptable substitutes. Responses to the collection of information are mandatory under Section 612 for anyone who sells or, in certain cases, uses substitutes for an ODS after April 18, 1994, the effective date of the final rule. Measures to protect confidentiality of information collected under the SNAP program are based on EPA's confidentiality regulations (40 CFR 2.201 *et seq.,* or Subpart B). Submitters may designate all or portions of their forms or petitions as confidential. EPA requires the submitters to substantiate their claim of confidentiality. Under CAA Section 114(c), emissions information may not be claimed as confidential.

To develop the lists of acceptable and unacceptable substitutes, the Agency must assess and compare ''overall risks to human health and the environment'' posed by use of substitutes in the context of particular applications. EPA requires submission of information covering a wide range of health and environmental factors. These include intrinsic properties such as physical and chemical information, atmospheric effects including ozone depleting potential and global warming potential, toxicity, and flammability, and use-specific data such as substitute applications, process description, environmental release data, exposure data during use of a substitute, environmental fate and transport, and cost information of the substitute. Once a completed submission has been received, the SNAP program will commence its review. Any substitute which is a new chemical must also be submitted to the Agency under the Premanufacture Notice program under the Toxic Substances Control Act (TSCA). Alternatives that will be used as sterilants must be filed jointly with EPA's Office of Pesticide Programs and with SNAP.

Form Numbers: 1265–14.

Respondents/affected entities: Manufacturers, importers, formulators and processors of substitutes for ODS.

Respondent's obligation to respond: Mandatory (40 CFR 82.176).

Estimated number of respondents: 180 (per year).

Frequency of response: Annual.

Total estimated burden: 5,557 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $471,714, which includes $22,938 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 814 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The Agency anticipates the number of submissions to the SNAP program to remain the same as the previous ICR during the next 3 years. Many of the recent SNAP submissions, and those anticipated over the next three years, are for chemicals previously found acceptable for other SNAP applications or for blends of alternatives already found acceptable. For the expected submissions, the burden of developing supporting information for the majority of these submissions is expected to decrease because it is easier to find and review information for substitutes that have been reviewed previously. EPA estimates a reduction in the number of respondents responsible for recordkeeping for substitutes acceptable subject to use conditions and narrowed use limits. The increased availability of alternatives reduces the need for industry to use alternatives previously listed as acceptable subject to narrowed use limits.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2020–06602 Filed 3–30–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0823; FRS 16602]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before April 30, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0823.

Title: Part 64, Pay Telephone Reclassification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 400 respondents; 16,820 responses.

Estimated Time per Response: 2.66 hours (average).

Frequency of Response: On occasion, quarterly and monthly reporting requirements and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 201–205, 218, 226 and 276.

Total Annual Burden: 44,700 hours.

Total Annual Cost: $768,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Confidentiality concerns are not relevant to these types of disclosures. The Commission is not requesting carriers or providers to submit confidential information to the Commission. If the Commission requests that carriers or providers submit information which they believe is confidential, the carriers or providers may request confidential treatment of their information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission established a plan to ensure that payphone service providers (PSPs) were compensated for certain non-coin calls originated from their payphones. As part of this plan, the Commission required that by October 7, 1997, local exchange carriers were to provide payphone-specific coding digits to PSPs, and that PSPs were to provide those digits from their payphones to interexchange carriers. The provision of payphone-specific coding digits was a prerequisite to payphone per-call compensation payments by IXCs to PSPs for subscriber 800 and access code calls. The Commission's Wireline Competition Bureau subsequently provided a waiver until March 9, 1998, for those payphones for which the necessary coding digits were not provided to identify calls. The Bureau also on that date clarified the requirements established in the Payphone Orders for the provision of payphone-specific coding digits and for tariffs that LECs must file pursuant to the Payphone Orders.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–06677 Filed 3–30–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0065; FRS 16603]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 1, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0065.

Title: Applications for New Authorization or Modification of Existing Authorization Under Part 5 of the FCC Rules-Experimental Radio Service.

Form Number: FCC Form 442.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions, Individuals or households, State, Local or Tribal Government.

Number of Respondents and Responses: 405 respondents; 655 responses.

Estimated Time per Response: 15—663 hours.

Frequency of Response: On occasion reporting requirements; Recordkeeping requirements; and Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4, 302, 303, 307 and 336 of the Communications Act of 1934, as amended.

Total Annual Burden: 3,474 hours.

Total Annual Cost: $52,150.

Privacy Act Impact Assessment: This information collection affects individuals or households. The Commission has a System of Records, FCC/OET–1 ''Experimental Radio Station License Files'' which covers the personally identifiable information (PII) that individual applicants may include in their submissions for experimental radio authorizations. The system of records notice (SORN) was published in the **Federal Register** on June 11, 2019, *see* 84 FR 27115. The SORN may be viewed at *https://www.fcc.gov/general/privacy-act-information.*

Nature and Extent of Confidentiality: Applicants may request that any information supplied be withheld from public inspection, *e.g.,* granted confidentiality, pursuant to 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the three-year clearance. On March 15, 2019, the Commission adopted a First Report and Order, in ET Docket No. 18–21; FCC 19–19, which updates a section of Part 5 of the CFR—Experimental Radio Service (ERS). The Commission recent R&O adopts a new subpart to the existing part 5 rules for a new and unique license type—the Spectrum Horizons Experimental Radio license (or ''Spectrum Horizons License''). Specifically, the Spectrum Horizons License will be available for experiments and demonstrations of equipment designed to operate exclusively on any frequency above 95 GHz.

§ 5.59 Forms To Be Used

(a) *Application for conventional, program, medical, compliance testing, and Spectrum Horizons experimental radio licenses.* (1) *Application for new authorization or modification of existing authorization.* Entities must submit FCC Form 442.

§ 5.77 Change in Equipment and Emission Characteristics

(a) The licensee of a conventional, broadcast, or Spectrum Horizons experimental radio station may make any changes in equipment that are deemed desirable or necessary provided:

* * * * *

(b) For conventional or Spectrum Horizons experimental radio stations, the changes permitted in paragraph (a) of this section may be made without prior authorization from the Commission provided that the licensee supplements its application file with a description of such change. If the licensee wants these emission changes to become a permanent part of the license, an application for modification must be filed.

§ 5.121 Station Record Requirements

(a)(1) For conventional, program, medical testing, compliance testing experimental radio stations, the current original authorization or a clearly legible photocopy for each station shall be retained as a permanent part of the station records but need not be posted. Station records are required to be kept for a period of at least one year after license expiration.

(a)(2) For Spectrum Horizons experimental radio stations, the licensee is solely responsible for retaining the current authorization as a permanent part of the station records but need not be posted. Station records are required to be kept for a period of at least one year after license expiration.

§ 5.702 Licensing Requirement—Necessary Showing

Each application must include a narrative statement describing in detail how its experiment could lead to the development of innovative devices and/or services on frequencies above 95 GHz and describe, as applicable, its plans for marketing such devices. This statement must sufficiently explain the proposed new technology/potential new service and incorporate an interference analysis that explains how the proposed experiment would not cause harmful interference to other services. The statement should include technical details, including the requested frequency band(s), maximum power, emission designators, area(s) of operation, and type(s) of device(s) to be used.

§ 5.703 Responsible Party

(a) Each Spectrum Horizons experimental radio applicant must identify a single point of contact responsible for all experiments conducted under the license and ensuring compliance with all applicable FCC rules.

(b) The responsible individual will serve as the initial point of contact for all matters involving interference resolution and must have the authority to discontinue any and all experiments being conducted under the license, if necessary.

(c) The license application must include the name of the responsible individual and contact information at which the person can be reached at any time of the day; this information will be listed on the license. Licensees are required to keep this information current.

§ 5.704 Marketing of Devices Under Spectrum Horizons Experimental Radio Licenses

Unless otherwise stated in the instrument of authorization, devices operating in accordance with a Spectrum Horizons experimental radio license may be marketed subject to the following conditions:

(a) Marketing of devices (as defined in § 2.803 of this chapter) and provision of services for hire is permitted before the radio frequency device has been authorized by the Commission.

(b) Licensees are required to ensure that experimental devices are either rendered inoperable or retrieved by them from trial participants at the conclusion of the trial. Licensees are required to notify experiment participants in advance of the trial that operation of the experimental device is subject to this condition. Each device sold under this program must be labeled as ''Authorized Under An Experimental License and May be Subject to Further Conditions Including Termination of Operation'' and carry a licensee assigned equipment ID number.

(c) The size and scope of operations under a Spectrum Horizons experimental license are subject to limitations as the Commission shall establish on a case-by-case basis.

§ 5.705 Interim report

Licensee must submit to the Commission an interim progress report 5 years after grant of its license. If a licensee requests non-disclosure of proprietary information, requests shall follow the procedures for submission set forth in § 0.459 of this chapter.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–06678 Filed 3–30–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0057; FRS 16595]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 1, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0057

Title: Application for Equipment Authorization, FCC Form 731

Form Number: FCC 731

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 11,305 respondents; 24,873 responses.

Estimated Time per Response: 8.11 hours (rounded).

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in the 47 U.S.C. 154(i), 301, 302, 303(e), 303(f) and 303(r).

Total Annual Burden: 201,603 hours.

Total Annual Costs: $50,155,140.

Privacy Act Impact Assessment: Yes. The personally identifiable information (PII) in this information collection is covered by a Privacy Impact Assessment (PIA), Equipment Authorizations Records and Files Information System. It is posted at: *https://www.fcc.gov/general/privacy-act-information#pia.*

Nature and Extent of Confidentiality: Minimal exemption from the Freedom of Information Act (FOIA) under 5 U.S.C. 552(b)(4) and FCC rules under 47 CFR 0.457(d) is granted for trade secrets which may be submitted as attachments to the application FCC Form 731. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the three-year clearance. The Commission is reporting program changes, increases to this information collection.

As the Commission notes above, the total number of respondents, total number of responses annually, the total annual hourly burden, and the total annual costs have been updated because of the continuing growth in applications for Certification, streamlining of the application information and combining of different information collection requests. With operations in the new frequencies formed under Section 15.258 the burden hours for the applicants have increased from 201,450 hours to 201,603. However, the additional Applications that will be filed per the frequencies will become the total burden hours for applicants to $50,155,140 from $50,110,000.

On March 15, 2019, the Commission adopted a First Report and Order, in ET Docket No. 18–2; FCC 19–19, which involves updates to 47 CFR part 15,—''Radio Frequency Devices,'' to provide permit certain operations above 95 GHz.[1] Among other things, the *Spectrum Horizons Order* made specific frequencies above 95 GHz available for the operation of radiofrequency devices without a license. Such devices are subject to the certification process of the Commission's equipment authorization program. Accordingly, 47 CFR was amended to include a new Section 15.258 as follows:

§ 15.258 Operation in the bands 116–123 GHz, 174.8–182 GHz, 185–190 GHz and 244–246 GHz.

(a) Operation on board an aircraft or a satellite is prohibited.

(b) Emission levels within the 116–123 GHz, 174.8–182 GHz, 185–190 GHz and 244–246 GHz bands shall not exceed the following equivalent isotropically radiated power (EIRP) limits as measured during the transmit interval:

(1) The average power of any emission shall not exceed 40 dBm and the peak power of any emission shall not exceed 43 dBm; or

(2) For fixed point-to-point transmitters located outdoors, the average power of any emission shall not exceed 82 dBm and shall be reduced by 2 dB for every dB that the antenna gain is less than 51 dBi. The peak power of any emission shall not exceed 85 dBm and shall be reduced by 2 dB for every dB that the antenna gain is less than 51 dBi. The provisions in this paragraph for reducing transmit power based on antenna gain shall not require that the power levels be reduced below the limits specified in paragraph (b)(1) of this section.

(3) The peak power shall be measured with a detection bandwidth that encompasses the entire occupied bandwidth within the intended band of operation, *e.g.,* 116–123 GHz, 174.8–182 GHz, 185–190 GHz or 244–246 GHz. The average emission levels shall be measured over the actual time period during which transmission occurs.

(4) Transmitters with an emission bandwidth of less than 100 MHz must limit their peak radiated power to the product of the maximum permissible radiated power (in milliwatts) times their emission bandwidth divided by 100 MHz. For the purposes of this paragraph, emission bandwidth is defined as the instantaneous frequency range occupied by a steady state radiated signal with modulation, outside which the radiated power spectral density never exceeds 6 dB below the maximum radiated power spectral density in the band, as measured with a 100 kHz resolution bandwidth spectrum analyzer. The center frequency must be stationary during the measurement interval, even if not stationary during normal operation (*e.g.,* for frequency hopping devices).

(c) Limits on spurious emissions:

(1) The power density of any emissions outside the band of operation, *e.g.,* 116–123 GHz, 174.8–182 GHz, 185–190 GHz or 244–246 GHz, shall consist solely of spurious emissions.

(2) Radiated emissions below 40 GHz shall not exceed the general limits in § 15.209.

(3) Between 40 GHz and the highest frequency specified in § 15.33, the level of these emissions shall not exceed 90 pW/cm^2 at a distance of 3 meters.

(4) The levels of the spurious emissions shall not exceed the level of the fundamental emission.

(d) *Frequency stability.* Fundamental emissions must be contained within the frequency bands specified in this section during all conditions of operation. Equipment is presumed to operate over the temperature range −20 to + 50 degrees Celsius with an input voltage variation of 85% to 115% of rated input voltage, unless justification is presented to demonstrate otherwise.

(e) Regardless of the power density levels permitted under this section, devices operating under the provisions of this section are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(f) Any transmitter that has received the necessary FCC equipment authorization under the rules of this chapter may be mounted in a group installation for simultaneous operation with one or more other transmitter(s) that have received the necessary FCC equipment authorization, without any additional equipment authorization. However, no transmitter operating under the provisions of this section may be equipped with external phase-locking inputs that permit beam-forming arrays to be realized.

(g) Measurement procedures that have been found to be acceptable to the Commission in accordance with § 2.947 of this chapter may be used to demonstrate compliance.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–06593 Filed 3–30–20; 8:45 am]

BILLING CODE 6712–01–P

[1] *Spectrum Horizons,* First Report and Order, 34 FCC Rcd 1605(2) (2019) (*Spectrum Horizons Order*).

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16604]

Open Commission Meeting by Teleconference, Tuesday, March 31, 2020

March 24, 2020.

The Federal Communications Commission will hold an Open Meeting on Tuesday, March 31, 2020, which is scheduled to commence at 10:30 a.m. Due to the current COVID–19 pandemic and related agency telework and headquarters access policies, this meeting will be in a wholly electronic format and will be open to the public on the internet via live feed from the FCC's web page at *www.fcc.gov/live* and on the FCC's YouTube channel. Because of these special circumstances, the items listed below are expected to be voted on circulation prior to the meeting.

Item No.	Bureau	Subject
1	WIRELINE COMPETITION	TITLE: Call Authentication Trust Anchor (WC Docket No. 17–97); Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources (WC Docket No. 20–67). SUMMARY: The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking that would (1) adopt rules requiring originating and terminating voice service providers to implement the STIR/SHAKEN caller ID authentication framework in the Internet Protocol portions of their networks; and (2) propose additional measures to combat illegal spoofing, including measures to implement portions of the TRACED Act.
2	MEDIA	TITLE: Rules Governing the Use of Distributed Transmission System Technologies (MB Docket No. 20–74); Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard (GN Docket No. 16–142). SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that would seek comment on whether to modify the Commission's rules governing the use of distributed transmission systems by broadcast television stations.
3	MEDIA	TITLE: Significantly Viewed Stations (MB Docket No. 20–73); Modernization of Media Regulation Initiative (MB Docket No. 17–105). SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that would seek comment on whether to update the methodology for determining whether a television broadcast station is "significantly viewed" in a community outside of its local market.
4	MEDIA	TITLE: Revision of the Commission's Part 76 Review Procedures (MB Docket No. 20–70); Modernization of Media Regulation Initiative (MB Docket No. 17–105); Revision of the Commission's Program Carriage Rules (MB Docket No. 11–131). SUMMARY: The Commission will consider a Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking that would seek comment on whether to modify the Commission's rules governing the resolution of program carriage disputes between video programming vendors and multichannel video programming distributors.
5	WIRELINE COMPETITION	TITLE: Eliminating *Ex Ante* Pricing Regulation and Tariffing of Telephone Access Charges (WC Docket No. 20–71). SUMMARY: The Commission will consider a Notice of Proposed Rulemaking that would propose to (1) eliminate *ex ante* pricing regulation and require detariffing of various end-user charges associated with interstate access service, and (2) prohibit carriers from separately listing these charges on customers' telephone bills.
6	MANAGING DIRECTOR	TITLE: Personnel Action #20–1. SUMMARY: The Commission will consider a Personnel Action.
7	MANAGING DIRECTOR	TITLE: Personnel Action #20–2. SUMMARY: The Commission will consider a Personnel Action.
8	MANAGING DIRECTOR	TITLE: Personnel Action #20–4. SUMMARY: The Commission will consider a Personnel Action.
9	MANAGING DIRECTOR	TITLE: Personnel Action #20–5. SUMMARY: The Commission will consider a Personnel Action.

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Live audio and video and Open Captioning will be provided on the video as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–06606 Filed 3–30–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 17–208; FRS 16599]

Meeting of the Federal Advisory Committee on Diversity and Digital Empowerment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces the April 28, 2020, telephonic and electronic-only meeting of the Federal Communications Commission's (Commission) Advisory Committee on Diversity and Digital Empowerment (ACDDE).

DATES: Tuesday, April 28, 2020, from 10:00 a.m. to 4:00 p.m.

ADDRESSES: The ACDDE meeting will be held via conference call and will be available to the public via the internet at *http://www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Jamila Bess Johnson, Designated Federal Officer (DFO) of the ACDDE, (202) 418–2608, *Jamila-Bess.Johnson@fcc.gov;* Julie Saulnier, Deputy DFO of the ACDDE, (202) 418–1598, *Julie.Saulnier@fcc.gov*; or Jamile Kadre, Deputy DFO of the ACDDE, (202) 418–2245, *Jamile.Kadre@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Agenda: The agenda for the meeting will include a report from each of the ACDDE working groups. The *Access to Capital Working Group* will report on its ongoing examination of ways to improve access to capital in order to encourage management and ownership of broadcast properties by a diverse range of voices, including minorities and women. The *Digital Empowerment and Inclusion Working Group* will discuss its work assessing access, adoption, and use of broadband and new technologies by under-resourced communities. The *Diversity in the Tech Sector Working Group* will report on its progress in examining issues pertaining to hiring, promotion, and retention of women and minorities in tech industries. This agenda may be modified at the discretion of the ACDDE Chair and the DFO.

The Committee's mission is to provide recommendations to the Commission on how to empower disadvantaged communities and accelerate the entry of small businesses, including those owned by women and minorities, into the media, digital news and information, and audio and video programming industries, including as owners, suppliers, and employees.

The ACDDE meeting is accessible to the public on the internet via live feed from the FCC's web page at *www.fcc.gov/live.* Members of the public may submit comments to the ACDDE using the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the ACDDE should be filed in GN Docket No. 17–208.

Open captioning will be provided for this event. Other reasonable accommodations for persons with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the Commission to contact the requester if more information is needed to fulfill the request.

Please allow at least five days' notice; last minute requests will be accepted but may not be possible to accommodate.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–06676 Filed 3–30–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0971; FRS 16597]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before April 30, 2020.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0971.

Title: Section 52.15, Request for ''For Cause'' Audits and State Commission's Access to Numbering Resource Application Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and State, Local or Tribal government.

Number of Respondents and Responses: 2,105 respondents; 63,005 responses.

Estimated Time per Response: 0.166 hours—3 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 153, 154, 201–205, and 251.

Total Annual Burden: 10,473 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Carrier numbering resource applications and audits of carrier compliance will be treated as confidential and will be exempt from public disclosure under 5 U.S.C. 552(b)(4).

Needs and Uses: There are two Paperwork Reduction Act related obligations under this OMB Control Number: 1. The North American Numbering Plan Administrator (NANPA), the Pooling Administrator, or a state commission may draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation; and 2. Requests for copies of carriers' applications for numbering resources may be made directly to carriers. The information collected will be used by the FCC, state commissions, the NANPA and the Pooling Administrator to verify the validity and accuracy of such data and to assist state commissions in carrying out their numbering responsibilities, such as area code relief.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–06594 Filed 3–30–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2020–N–7]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: Community Support Requirements—30-day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA) is seeking public comments concerning an information collection known as ''Community Support Requirements,'' which has been assigned control number 2590–0005 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on March 31, 2020.

DATES: Interested persons may submit comments on or before April 30, 2020.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov.* Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Community Support Requirements, (No. 2020–N–7)' '' by any of the following methods:

• *Agency website: www.fhfa.gov/open-for-comment-or-input.*

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.

• *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Community Support Requirements, (No. 2020–N–7).''

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Deattra D. Perkins, Senior Policy Analyst, Division of Housing Mission & Goals, *Deattra.Perkins@fhfa.gov,* (202) 649–3133; or Eric Raudenbush, Associate General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Home Loan Bank System (System) consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office of the Banks that issues and services their debt securities). The Banks are wholesale financial institutions, organized under authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through eligible non-member ''housing associates.'' Each Bank is structured as a regional cooperative that is owned and controlled by member financial institutions located within its district, which are also its primary customers.

Section 10(g)(1) of the Bank Act requires the Director of FHFA to promulgate regulations establishing standards of community investment or service that Bank member institutions must meet in order to maintain access to long-term advances (*i.e.,* loans made by a Bank to a member).[1] Section 10(g)(2) of the Bank Act requires that, in establishing these community support requirements for Bank members, FHFA take into account factors such as the member's performance under the Community Reinvestment Act of 1977 (CRA)[2] and record of lending to first-time homebuyers.[3] FHFA's community support regulation, which establishes standards and review criteria for determining compliance with section 10(g) of the Bank Act, is set forth at 12 CFR part 1290.

Part 1290 requires that each Bank member subject to community support review submit to FHFA biennially a completed Community Support Statement (Form 060), which contains several short questions the answers to which are used by FHFA to assess the responding member's compliance with the community support standards.[4]

[1] *See* 12 U.S.C. 1430(g)(1). By regulation, FHFA has defined ''long-term'' advances to be those with an original term to maturity greater than five years. *See* 12 CFR 1266.1.

[2] 12 U.S.C. 2901 *et seq.*

[3] *See* 12 U.S.C. 1430(g)(2).

[4] *See* 12 CFR 1290.2. Non-depository community development financial institutions and institutions

Continued

Members are strongly encouraged to complete and submit Form 060 online, but may submit a version via email or fax if they cannot complete the submission online. In part I of the Form, a member that is subject to the CRA must record its most recent CRA rating and the year of that rating. Part II of the Form addresses a member's efforts to assist first-time homebuyers. A member may either record the number and dollar amount of mortgage loans made to first-time homebuyers in the previous or current calendar year (part II.A), or indicate the types of programs or activities it has undertaken to assist first-time homebuyers by checking selections from a list (part II.B), or do both. If a member has received a CRA rating of ''Outstanding,'' it need not complete part II of the Form. A copy of the current Form and related instructions appear at the end of this Notice.

Part 1290 also establishes the circumstances under which FHFA will restrict a member's access to long-term Bank advances and to Affordable Housing Program (AHP), Community Investment Program (CIP) and Community Investment Cash Advance (CICA) programs for failure to meet the community support requirements.[5] It permits Bank members whose access to long-term advances has been restricted to apply directly to FHFA to remove the restriction if certain criteria are met.[6]

B. Need for and Use of the Information Collection

FHFA uses the information collection contained in FHFA Form 060 and part 1290 to determine whether Bank members satisfy the statutory and regulatory community support requirements and to ensure that, as required by statute and regulation, only Bank members that meet those requirements maintain continued access to long-term Bank advances and to AHP, CIP, and CICA programs.

The OMB control number for this information collection is 2590–0005, which is due to expire on March 31, 2020. The respondents are Bank member institutions.

C. Burden Estimate

FHFA has analyzed the two facets of this information collection in order to estimate the hour burdens that the collection will impose upon Bank members annually over the next three years. Based on that analysis, FHFA estimates that the total annual hour burden will be 1,950 hours. The method FHFA used to determine the annual hour burden for each facet of the information collection is explained in detail below.

1. Community Support Statements

Most Bank members are required to submit a completed Community Support Statement biennially, with members that are non-depository community development financial institutions (CDFIs) or that have been members for less than one year as of March 31st of the year submission is required exempted from the submission requirement. There are currently about 6,700 Bank members. Considering that about 60 of those are non-depository CDFIs and that the System has experienced a consistent net loss of about 100 to 200 Bank members annually over a period of years, FHFA estimates that an average of about 6,400 members will be required to submit the biennial statement over each of the next several cycles, which corresponds to an annual average of 3,200 respondents. FHFA estimates that the average preparation time for each Community Support Statement will be 0.6 hours. The estimate for the total annual hour burden on Bank members in connection with the preparation and submission of Community Support Statements is 1,920 hours (3,200 Statements × 0.6 hours).

2. Requests to Remove a Restriction on Access to Long-Term Advances

FHFA estimates that an annual average of 50 Bank members whose access to long-term advances and to AHP, CIP, and CICA programs has been restricted will submit requests to FHFA to remove those restrictions, and that the average preparation time for each request will be 0.6 hours. The estimate for the total annual hour burden on members in connection with the preparation and submission of requests to remove a restriction on access to long-term advances is 30 hours (50 requests × 0.6 hours).

D. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice and request for public comments regarding this information collection in the **Federal Register** on January 22, 2020.[7] The 60-day comment period closed on March 23, 2020. FHFA received no comments.

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Robert Winkler,

Chief Information Officer, Federal Housing Finance Agency.

BILLING CODE 8070–01–P

that have been Bank members for less than one year as of March 31 of the year the forms are due are not required to submit Form 060.

[5] *See* 12 CFR 1290.5(b), (e).

[6] *See* 12 CFR 1290.5(d).

[7] *See* 85 FR 3680 (Jan. 22, 2020).

FHFA Form 060
Informational Purposes Only

FEDERAL HOUSING FINANCE AGENCY
COMMUNITY SUPPORT PROGRAM
COMMUNITY SUPPORT STATEMENT

(see instructions page 2)

FHFA Federal Home Loan Bank (FHLBank) Member ID Number: *[online form: Member fills in]*

Name of FHLBank Member Institution: *[online form: FHFA automatically fills in once the member enters its FHFA ID Number]*

Mailing Address: *[online form: FHFA fills in]*

City: *[online form: FHFA fills in]* **State:** *[online form: FHFA fills in]* **Zip Code:** *[online form: FHFA fills in]*

Submitter Name: *[online form: Member fills in]* **Title:** *[online form: Member fills in]*

Work Email: *[Member fills in and used for validation purposes only]*

Part I. Community Reinvestment Act (CRA) Standard:

Most recent federal CRA rating: *[online form: drop down list]* Year of most recent federal CRA rating: *[online form: drop down list]*

Part II. First-time Homebuyer Standard: *All Federal Home Loan Bank members must complete either Section A or B of this part, except that members with "Outstanding" federal CRA ratings need not complete this part. Members should use data or activities for the previous or current calendar year in completing this part.*

A. **Complete the following two questions:** *If your institution did not make, or did not track, mortgage loans to first-time homebuyers, you must complete Section B of this part.* [online form: Member completes]

1. Number of mortgage loans made to first-time homebuyers # ______
2. Dollar amount of mortgage loans made to first-time homebuyers $ ______

B. **Check as many as applicable:**

1. Offer in-house first-time homebuyer program (e.g., underwriting, marketing plans, outreach programs) ______
2. Offer other in-house lending products that serve first-time or low- and moderate-income homebuyers ______
3. Offer flexible underwriting standards for first-time homebuyers ______
4. Participate in nationwide first-time homebuyer programs (e.g., Fannie Mae, Freddie Mac) ______
5. Participate in federal government programs that serve first-time homebuyers (e.g., FHA, VA, USDA RD) ______
6. Participate in state or local government programs targeted to first-time homebuyers (e.g., mortgage revenue bond financing) ______
7. Provide financial support or technical assistance to community organizations that assist first-time homebuyers ______
8. Participate in loan consortia that make loans to first-time homebuyers ______
9. Participate in or support special counseling or homeownership education targeted to first-time homebuyers ______
10. Hold investments or make loans that support first-time homebuyer programs ______
11. Hold mortgage-backed securities that may include a pool of loans to low- and moderate-income homebuyers ______
12. Use affiliated lenders, credit union service organizations, or other correspondent, brokerage or referral arrangements with specific unaffiliated lenders, that provide mortgage loans to first-time or low- and moderate-income homebuyers ______
13. Participate in the Affordable Housing Program or other targeted community investment/development programs offered by the Federal Home Loan Bank ______
14. Other (attach description of other activities supporting first-time homebuyers; see instructions for Part II) ______
15. None of the above (attach explanation of any mitigating factors; see instructions for Part II) ______

Part III. Certification: By submitting this Community Support Statement, I certify that I am a senior official of the above institution, that I am authorized to provide this information to FHFA, and that the information in this Statement and any attachments is accurate to the best of my knowledge.

Sign: *[not on the online form; "Submit" button is equivalent]* **Date:** *[not on the online form; date is automatic]*

Community Support Statement (FHFA Form 060) Instructions

Purpose: Section 10(g) of the Federal Home Loan Bank Act [12 U.S.C. § 1430(g)] sets forth the community support requirements. Under the Federal Housing Finance Agency's (FHFA) implementing community support regulation [12 CFR part 1290], FHFA is required to take into account a Federal Home Loan Bank (Bank) member's performance under the Community Reinvestment Act of 1977 [12 U.S.C. § 2901 et seq.] (federal CRA) and its record of lending to first-time homebuyers, in determining whether to maintain the member's access to long-term Bank advances and to a Bank's Affordable Housing Program (AHP) and targeted Community Investment Cash Advances (CICA) programs. For purposes of community support review, the term "long-term advances" means advances with a term to maturity greater than one year.

Part I. (CRA Standard): Members subject to the federal CRA must complete this part. Provide your institution's most recent federal CRA rating and the year of the rating. Credit unions and insurance companies, which are not subject to the federal CRA, should indicate "N/A" [i.e., not applicable] in the CRA rating field on this Community Support Statement. If your institution is not a credit union or insurance company and is not subject to the federal CRA, indicate the reason for the exemption. If a member's most recent federal CRA rating is "Needs to Improve," FHFA will place the member on probation. During the probationary period, the member will retain access to long-term Bank advances and Bank AHP and CICA programs. If the member does not receive an improved federal CRA rating at its next CRA evaluation, FHFA will restrict its prospective access to long-term Bank advances and Bank AHP and CICA programs. If a member's most recent federal CRA rating is "Substantial Non-compliance," FHFA will restrict the member's prospective access to long-term Bank advances and AHP and CICA programs. The restriction will remain in effect until the member's federal CRA rating improves.

Part II. (First-time Homebuyer Standard): All members, except those with "Outstanding" federal CRA ratings, must complete this part. A member may satisfy the first-time homebuyer standard either by: demonstrating lending performance to first-time homebuyers (Section A); or demonstrating other financial support or participation in programs, products, services or investments, that directly or indirectly assists first-time homebuyers (Section B); or by a combination of both factors. If none of the information requested in this part describes your institution's activities to support first-time homebuyers, you may attach a brief description of other activities of your institution that support first-time homebuyers, or a brief explanation of any mitigating factors that adversely affect your institution's ability to assist first-time homebuyers, such as charter or operational limitations or market conditions. If a member does not demonstrate assistance to first-time homebuyers or include an explanation of mitigating factors on this Community Support Statement, FHFA will restrict the member's prospective access to long-term Bank advances and Bank AHP and CICA programs. The restriction will remain in effect until the member submits applicable information to FHFA that demonstrates the member's compliance with the first-time homebuyer standard.

Part III. (Certification): All members must complete this part. A senior official of your institution with authorization to provide the information in this Community Support Statement must certify that the information in this Community Support Statement and any attachments are accurate to the best of his/her knowledge. If a member submits a Community Support Statement that does not include this required certification, FHFA will restrict the member's prospective access to long-term Bank advances and Bank AHP and CICA programs.

Assistance: Your institution's Federal Home Loan Bank has a Community Support Program Representative that can assist you in preparing this Community Support Statement. Please contact your FHLBank's Community Support Program Representative: https://www.fhfa.gov/PolicyProgramsResearch/Programs/AffordableHousing/Documents/FHLBanks-CSP-Representatives.pdf

Federal Housing Finance Agency
Division of Housing Mission and Goals
400 7th Street, S.W.
Washington, D.C. 20219

Paperwork Reduction Act Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

FHFA Form 060 OMB Number 2590-0005 Expires 03/31/2020 Page 2 of 2

[FR Doc. 2020–06683 Filed 3–30–20; 8:45 am]

BILLING CODE 8070–01–C

FEDERAL HOUSING FINANCE AGENCY

[No. 2020–N–6]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: Members of Federal Home Loan Banks—30-day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA) is seeking public comments concerning an information collection known as ''Members of the Banks,'' which has been assigned control number 2590–0003 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on March 31, 2020.

DATES: Interested persons may submit comments on or before April 30, 2020.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov.* Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Members of the Banks, (No. 2020–N–6)''' by any of the following methods:

- *Agency website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Members of the Banks, (No. 2020–N–6).''

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT:

Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, *Jonathan.Curtis@fhfa.gov,* (202) 649–3321; or Eric Raudenbush, Associate General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084, (these are not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Home Loan Bank System consists of eleven regional Federal Home Loan Banks (Banks) and the Office of Finance (a joint office of the Banks that issues and services the Banks' debt securities). The Banks are wholesale financial institutions, organized under the authority of the Federal Home Loan Bank Act (Bank Act) to serve the public interest by enhancing the availability of residential housing finance and community lending credit through their member institutions and, to a limited extent, through certain eligible nonmembers. Each Bank is structured as a regional cooperative that is owned and controlled by member institutions located within its district, which are also its primary customers. The Banks carry out their public policy functions primarily by providing low cost loans, known as advances, to their members. With limited exceptions, an institution may obtain advances and access other products and services provided by a Bank only if it is a member of that Bank.

The Bank Act limits membership in any Bank to specific types of financial institutions located within the Bank's district that meet specific eligibility requirements. Section 4 of the Bank Act specifies the types of institutions that may be eligible for membership and establishes eligibility requirements that each type of applicant must meet in order to become a Bank member.[1] That provision also specifies that (with limited exceptions) an eligible institution may become a member only of the Bank of the district in which the institution's ''principal place of business'' is located.[2] With respect to the termination of Bank membership, section 6(d) of the Bank Act sets forth requirements pursuant to which an institution may voluntarily withdraw from membership or a Bank may terminate an institution's membership for cause.[3]

B. Need For and Use of the Information Collection

FHFA's regulation entitled ''Members of the Banks,'' located at 12 CFR part 1263, implements the statutory provisions on Bank membership and otherwise establishes substantive and procedural requirements relating to the initiation and termination of membership. Many of the provisions in the membership regulation require that an institution submit information to a Bank or to FHFA, in most cases to demonstrate compliance with statutory or regulatory requirements or to request action by the Bank or Agency.

There are four types of information collections that may occur under part 1263. First, the regulation provides that (with limited exceptions) no institution may become a member of a Bank unless it has submitted to that Bank an application that documents the applicant's compliance with the statutory and regulatory membership eligibility requirements and that otherwise includes all required information and materials.[4] Second, the regulation provides applicants that have been denied membership by a Bank the option of appealing the decision to FHFA. To file such an appeal, an applicant must submit to FHFA a copy of the Bank's decision resolution denying its membership application and a statement of the basis for the appeal containing sufficient facts, information, and analysis to support the applicant's position.[5] Third, the regulation provides that, in order to initiate a voluntary withdrawal from Bank membership, a member must submit to its Bank a written notice of intent to withdraw.[6] Fourth, under certain circumstances, the regulation permits a member of one Bank to transfer its membership to a second Bank ''automatically'' without either initiating a voluntary withdrawal from the first Bank or submitting a membership application to the second Bank. Despite the regulatory reference to such a transfer as being ''automatic,'' a member meeting the criteria for an automatic transfer must initiate the transfer process by filing a request with its current Bank, which will then arrange the details of the transfer with the second Bank.[7]

The Banks use most of the information collected under part 1263 to determine whether an applicant satisfies the statutory and regulatory requirements for Bank membership and should be approved as a Bank member. The Banks may use some of the information collected under part 1263 as a means of learning that a member wishes to withdraw or to transfer its membership to a different Bank so that the Bank can begin to process those requests. In rare cases, FHFA may use the collected information to determine whether an institution that has been denied membership by a Bank should be permitted to become a member of that Bank.

The OMB control number for this information collection is 2590–0003, which is due to expire on March 31, 2020. The likely respondents are financial institutions that are, or are applying to become, Bank members.

C. Burden Estimate

FHFA has analyzed the time burden imposed on respondents by the four collections under this control number and estimates that the average annual burden imposed on all respondents by those collections over the next three years will be 2,188 hours. This estimate is derived from the following calculations:

[1] *See* 12 U.S.C. 1424(a).

[2] *See* 12 U.S.C. 1424(b).

[3] *See* 12 U.S.C. 1426(d).

[4] *See* 12 CFR 1263.2(a), 1263.6–1263.9, 1263.11–1263.18.

[5] *See* 12 CFR 1263.5.

[6] *See* 12 CFR 1263.26.

[7] *See* 12 CFR 1263.4(b), 1263.18(d), (e).

1. Membership Applications

FHFA estimates that the average number of applications for Bank membership submitted annually will be 144 and that the average time to prepare and submit an application and supporting materials will be 15 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of applications for Bank membership is (144 applications × 15 hours per application) = 2,160 hours.

2. Appeals of Membership Denials

FHFA estimates that the average number of applicants that have been denied membership by a Bank that will appeal such a denial to FHFA will be 1 and that the average time to prepare and submit an application for appeal will be 10 hours. Accordingly, the estimate for the annual hour burden associated with the preparation and submission of membership appeals is (1 appellants × 10 hours per application) = 10 hours.

3. Notices of Intent to Withdraw from Membership

FHFA estimates that the average number of Bank members submitting a notice of intent to withdraw from membership annually will be 5 and that the average time to prepare and submit a notice will be 1.5 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of notices of intent to withdraw is (5 withdrawing members × 1.5 hours per application) = 7.5, rounded to 8 hours.

4. Requests for Transfer of Membership to Another Bank District

FHFA estimates that the average number of Bank members submitting a request for transfer to another Bank will be 5 and that the average time to prepare and submit a request will be 2 hours. Accordingly, the estimate for the annual hour burden associated with preparation and submission of requests for automatic transfer is (5 transferring members × 2 hours per request) = 10 hours.

D. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice and request for public comments regarding this information collection in the **Federal Register** on January 22, 2020.[8] The 60-day comment period closed on March 23, 2020. FHFA received no comments.

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Robert Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2020–06686 Filed 3–30–20; 8:45 am]

BILLING CODE 8070–01–P

[8] *See* 85 FR 3683 (Jan. 22, 2020).

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Temporary approval of information collection.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has temporarily revised the Financial Statements for Holding Companies pursuant to the authority delegated to the Board by the Office of Management and Budget (OMB). The revisions are applicable only to reports reflecting the March 31, 2020, as of date.

FOR FURTHER INFORMATION CONTACT: A copy of the Paperwork Reduction Act (PRA) OMB submission, including the reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, if approved. These documents will also be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the PRA to temporarily approve a revision to a collection of information without providing opportunity for public comment if the Board determines that a change in an existing collection must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection or substantially interfere with the Board's ability to perform its statutory obligation.

The Board's delegated authority requires that the Board, after temporarily approving a collection, solicit public comment on a proposal to extend the temporary collection for a period not to exceed three years. However, as discussed below, the Board does not intend to solicit comment on such a proposal with respect to these temporary revisions, as the Board, after soliciting comment, has separately approved identical revisions that would apply to reports subsequent to those affected by the temporary revisions.

Final Approval Under OMB Delegated Authority of the Temporary Revision of the Following Information Collection

Report title: Financial Statements for Holding Companies.

Agency form number: FR Y–9C; FR Y–9LP; FR Y–9SP; FR Y–9ES; FR Y–9CS.

OMB control number: 7100–0128.

Effective date: March 31, 2020.

Frequency: Quarterly, semiannually, and annually.

Affected public: Businesses or other for-profit.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs),[1] securities holding companies (SHCs), and U.S. intermediate holding companies (IHCs) (collectively, holding companies (HCs)).

Estimated number of respondents:

FR Y–9C (non-advanced approaches (AA) HCs community bank leverage ratio (CBLR)) with less than $5 billion in total assets—71,

FR Y–9C (non AA HCs CBLR) with $5 billion or more in total assets—35,

FR Y–9C (non AA HCs non-CBLR) with less than $5 billion in total assets—84,

FR Y–9C (non AA HCs non-CBLR) with $5 billion or more in total assets—154,

FR Y–9C (AA HCs)—19,

FR Y–9LP—434,

FR Y–9SP—3,960,

FR Y–9ES—83,

FR Y–9CS—236.

Estimated average hours per response:

[1] An SLHC must file one or more of the FR Y–9 family of reports unless it is: (1) A grandfathered unitary SLHC with primarily commercial assets and thrifts that make up less than 5 percent of its consolidated assets; or (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the SEC pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

Reporting

FR Y–9C (non AA HCs CBLR) with less than $5 billion in total assets—29.14,
FR Y–9C (non AA HCs CBLR) with $5 billion or more in total assets—35.11,
FR Y–9C (non AA HCs non-CBLR) with less than $5 billion in total assets—40.98,
FR Y–9C (non AA HCs non-CBLR) with $5 billion or more in total assets—46.95,
FR Y–9C (AA HCs)—48.59,
FR Y–9LP—5.27,
FR Y–9SP—5.40,
FR Y–9ES—0.50,
FR Y–9CS—0.50.

Recordkeeping

FR Y–9C—1,
FR Y–9LP—1,
FR Y–9SP—0.50,
FR Y–9ES—0.50,
FR Y–9CS—0.50.

Estimated annual burden hours:

Reporting

FR Y–9C (non AA HCs CBLR) with less than $5 billion in total assets—8,276,
FR Y–9C (non AA HCs CBLR) with $5 billion or more in total assets—4,915,
FR Y–9C (non AA HCs non-CBLR) with less than $5 billion in total assets—13,769,
FR Y–9C (non AA HCs non-CBLR) with $5 billion or more in total assets—28,921,
FR Y–9C (AA HCs)—3,693,
FR Y–9LP—9,149,
FR Y–9SP—42,768,
FR Y–9ES—42,
FR Y–9CS—472.

Recordkeeping

FR Y–9C—1,452,
FR Y–9LP—1,736,
FR Y–9SP—3,960,
FR Y–9ES—42,
FR Y–9CS—472.

General description of report: The FR Y–9 family of reporting forms continues to be the primary source of financial data on holding companies that examiners rely on in the intervals between on-site inspections. Financial data from these reporting forms are used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate holding company mergers and acquisitions, and to analyze a holding company's overall financial condition to ensure the safety and soundness of its operations. The FR Y–9C, FR Y–9LP, and FR Y–9SP serve as standardized financial statements for the consolidated holding company. The Board requires HCs to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. The FR Y–9ES is a financial statement for HCs that are Employee Stock Ownership Plans. The Board uses the voluntary FR Y–9CS (a free-form supplement) to collect additional information deemed to be critical and needed in an expedited manner. HCs file the FR Y–9C on a quarterly basis, the FR Y–9LP quarterly, the FR Y–9SP semiannually, the FR Y–9ES annually, and the FR Y–9CS on a schedule that is determined when this supplement is used.

Current actions: The Board has temporarily revised the instructions for the FR Y–9C to permit banking organizations to report data in a manner consistent with the final rule titled Standardized Approach for Calculating the Exposure Amount of Derivative Contracts (SA–CCR rule) [2] beginning with the FR Y–9C report as of March 31, 2020, rather than the report as of June 30, 2020, as separately approved by the Board. For the FR Y–9C report as of March 31, 2020, respondents may report data affected by the SA–CCR rule on a best efforts basis. Because the temporary revision applies only to reports as of March 31, 2020, and because the Board, after soliciting public comment, has separately approved SA–CCR-related revisions to the FR Y–9C beginning with reports as of June 30, 2020, the Board believes that further public comment would not serve any regulatory purpose.

The Board has determined that this revision to the FR Y–9C must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as delaying the revisions would result in the collection of inaccurate information and would interfere with the Board's ability to perform its statutory duties.

Legal authorization and confidentiality: The Board has the authority to impose the reporting and recordkeeping requirements associated with the FR Y–9 family of reports on BHCs pursuant to section 5 of the Bank Holding Company Act of 1956 (BHC Act) (12 U.S.C. 1844); on SLHCs pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2) and (3)); on U.S. IHCs pursuant to section 5 of the BHC Act (12 U.S.C. 1844), as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 511(a)(1) and 5365); and on securities holding companies pursuant to section 618 of the Dodd-Frank Act (12 U.S.C. 1850a(c)(1)(A)). The obligation to submit the FR Y–9 series of reports, and the recordkeeping requirements set forth in the respective instructions to each report, are mandatory, except for the FR Y–9CS, which is voluntary.

With respect to the FR Y–9C report, Schedule HI's memoranda data item 7(g) ''FDIC deposit insurance assessments,'' Schedule HC–P's data item 7(a) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies,'' and Schedule HC–P's data item 7(b) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to other parties'' are considered confidential commercial and financial information. Such treatment is appropriate under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) because these data items reflect commercial and financial information that is both customarily and actually treated as private by the submitter, and which the Board has previously assured submitters will be treated as confidential. It also appears that disclosing these data items may reveal confidential examination and supervisory information, and in such instances, this information would also be withheld pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)), which protects information related to the supervision or examination of a regulated financial institution.

In addition, for both the FR Y–9C report and the FR Y–9SP report, Schedule HC's memorandum item 2.b., the name and email address of the external auditing firm's engagement partner, is considered confidential commercial information and protected by exemption 4 of the FOIA (5 U.S.C. 552(b)(4)) if the identity of the engagement partner is treated as private information by HCs. The Board has assured respondents that this information will be treated as confidential since the collection of this data item was proposed in 2004.

Aside from the data items described above, the remaining data items on the FR Y–9C report and the FR Y–9SP report are generally not accorded confidential treatment. The data items collected on FR Y–9LP, FR Y–9ES, and FR Y–9CS reports, are also generally not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information (12 CFR part 261), however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any

[2] *See* 85 FR 4362 (January 24, 2020).

such request to determine if confidential treatment is appropriate and will inform the respondent if the request for confidential treatment has been denied.

To the extent the instructions to the FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9ES reports each respectively direct the financial institution to retain the workpapers and related materials used in preparation of each report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information is considered confidential pursuant to exemption 8 of the FOIA (5 U.S.C. 552(b)(8)). In addition, the workpapers and related materials may also be protected by exemption 4 of the FOIA, to the extent such financial information is treated as confidential by the respondent (5 U.S.C. 552(b)(4)).

Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–06751 Filed 3–30–20; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each application is available for inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than April 30, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Ally Financial Inc. and IB Finance Holding Company, LLC, both of Detroit, Michigan;* to acquire Cardholder Management Services, Inc., Woodbury, New York, and indirectly acquire Merrick Bank Corporation, South Jordan, Utah, and thereby engage in operating an industrial bank, pursuant to section 225.28(b)(4)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, March 26, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–06681 Filed 3–30–20; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2020–03; Docket No. 2020–0002, Sequence No. 10]

Premium Class Transportation Reporting Requirements

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of Federal Travel Regulation (FTR) Bulletin 20–05, premium class transportation reporting requirements.

SUMMARY: GSA is publishing the reporting requirements for the use of other than coach class, also known as ''premium class'' transportation by Government employees on official travel. This bulletin also clarifies which accommodations are not considered premium class, and are therefore not reportable. This information will be available in FTR Bulletin 20–05, which can be found on GSA's website at *https://gsa.gov/ftrbulletins.*

DATES: Applicability date: March 31, 2020. This notice applies to all official travel and relocation and remains in effect until superseded or cancelled.

FOR FURTHER INFORMATION CONTACT: For clarification of content, please contact Ms. Cheryl D. McClain-Barnes, Program Analyst, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–208–4334, or by email at *travelpolicy@gsa.gov.* Please cite Notice of FTR Bulletin 20–05.

SUPPLEMENTARY INFORMATION:

The FTR requires Government travelers to use coach class accommodations, unless they have an authorized exception to use the lowest class of premium class transportation required to meet their needs and accomplish the mission. Federal agencies must report the authorized use and payment of premium class transportation while on official travel when the cost is more expensive than comparable coach class accommodations for the same itinerary. Changes in the airline industry such as the creation of classes that are in between coach and business classes has prompted agencies to request clarity in premium class reporting requirements. FTR Bulletin 20–05 provides the guidance needed to promote consistent reporting on the use of premium class transportation used for official temporary duty and relocation travel.

Jessica Salmoiraghi,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2020–06666 Filed 3–30–20; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2020–03; Docket No. 2020–0002; Sequence No. 11]

Notice of Availability of the Revised Draft Environmental Impact Statement for the Expansion and Modernization of the San Luis I Land Port of Entry, San Luis, Arizona

AGENCY: Public Building Service (PBS), General Services Administration (GSA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability, and opportunity for public review and comment, of the revised Draft Environmental Impact Statement (DEIS), which analyzes the potential environmental impacts of a proposal by the General Services Administration (GSA) to expand and modernize the San Luis I Land Port of Entry (LPOE) located in San Luis, Arizona along the U.S.-Mexico international border. During the draft EIS review period in April 2019, multiple comments were received, including one comment which identified a new alternative to be included in the analysis. Therefore, GSA determined that the Draft EIS would be re-released for public review that includes the new alternative. The revised DEIS describes the project purpose and need, the alternatives being considered, and the potential impacts of each alternative on the existing environment. As the lead agency for this undertaking, GSA is acting on behalf of its major tenant at the facility, the Department of Homeland Security's U.S. Customs and Border Protection (CBP).

DATES: Due to the COVID–19 outbreak, the public comment period will be extended to 90 days (Friday, April 3, 2020 through Thursday, July 2, 2020). The date and location of the public meeting will be determined at a later date and an additional notice will be published with the meeting details.

ADDRESSES: An electronic copy of the revised DEIS and the 2019 DEIS may be found online on the following website: *https://www.gsa.gov/about-us/regions/welcome-to-the-pacific-rim-region-9/land-ports-of-entry/san-luis-i-land-port-of-entry.*

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning this project should be directed to: Osmahn Kadri, Regional Environmental Quality Advisor/NEPA Project Manager, GSA, at 415–522–3617, or via email to *osmahn.kadri@gsa.gov.* Written comments can be mailed to: GSA San Luis EIS, c/o LMI, 7940 Jones Branch Drive, Tysons, VA 22102.

SUPPLMENTARY INFORMATION:

Background

The San Luis I LPOE is located on the U.S.-Mexico international border in the City of San Luis, Arizona. It is the westernmost LPOE in Arizona and is approximately four miles from the California border. The San Luis I LPOE was built in 1982 to accommodate noncommercial traffic to and from Mexico. The facilities at the LPOE are in deteriorated condition and are inadequate for the present volume of pedestrian and vehicle traffic. There has been a 58 percent increase in the number of personal vehicles processed since 2010. The higher volume and outdated facilities creates long wait times, leading to traffic backups in downtown San Luis.

GSA is proposing to expand and modernize the San Luis I LPOE to correct operational deficiencies imposed by deteriorating building conditions and improve the LPOE's functionality, capacity, and security. Four alternatives, the Proposed Action Alternative, Alternative 1, Alternative 2, and the No Action Alternative, are evaluated in the revised DEIS. Alternative 2 was added to the revised DEIS as a result of a comment received on the 2019 DEIS.

Proposed Action Alternative—Demolition and Redevelopment

GSA would acquire the land adjacent to the western end of the LPOE, the former Friendship Park, and the LPOE would be reconfigured to streamline CBP operations and inspection processes. GSA would demolish the old, deteriorated buildings and construct new buildings and infrastructure on the expanded site to accommodate the increasing volume of pedestrian and vehicle traffic. The Proposed Action would be implemented in a phased approach to alleviate potential disruptions to operations at the LPOE.

Alternative 1—Renovate and Modernize

GSA would not acquire former Friendship Park, but would renovate and modernize all existing facilities and infrastructure at the LPOE. The LPOE layout would remain as currently configured, and current traffic patterns entering and leaving the LPOE would remain the same.

Alternative 2—Relocate Southbound Exit

GSA would acquire Friendship Park and construct new facilities as described under the Proposed Action, however the outgoing traffic would be routed directly south from Archibald Street to Avenida Morelos in Mexico. The rerouting of southbound traveling vehicles directly south from Archibald Street would alleviate the need for vehicles to turn left onto Urtuzuastegui Street.

No Action Alternative

GSA would not renovate or modernize any portion of the LPOE. The LPOE would remain as-is and continue its operations in facilities as they are currently configured.

Public Meeting

The date and location of the public meeting will be determined at a later date and an additional notice will be published with that information. Comments must be received by July 2, 2020, via email to *osmahn.kadri@gsa.gov* or sent to the address listed above.

Jared Bradley,

Director, Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2020–06669 Filed 3–30–20; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Due to an administrative error, set forth below is a list of petitions received by HRSA on December 1, 2019, through December 31, 2019. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading ''For Further Information Contact''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of HHS) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Thomas J. Engels,

Administrator.

List of Petitions Filed

1. Marla Henry on behalf of K. H., Odenton, Maryland, Court of Federal Claims No: 19–1826V
2. Raymond P. Brady, Wilmington, Delaware, Court of Federal Claims No: 19–1832V
3. Klaudia Aubuchon, Claremont, California, Court of Federal Claims No: 19–1833V
4. Jean Robey, Honesdale, Pennsylvania, Court of Federal Claims No: 19–1839V
5. Misty Rastetter and Matthew Rastetter, on behalf of G. R., Rockwell City, Iowa, Court of Federal Claims No: 19–1840V
6. Robert Bachant, Las Vegas, Nevada, Court of Federal Claims No: 19–1841V
7. Karam Zakharia, Metairie, Louisiana, Court of Federal Claims No: 19–1842V
8. Quanda Luna, St. Louis, Missouri, Court of Federal Claims No: 19–1843V
9. Paul Ware, Elberta, Alabama, Court of Federal Claims No: 19–1844V
10. Gene Bostwick, Jr., Champaign, Illinois, Court of Federal Claims No: 19–1845V
11. Margaret Hill, Charleston, South Carolina, Court of Federal Claims No: 19–1847V
12. Mark Thoma, Phoenix, Arizona, Court of Federal Claims No: 19–1848V
13. Shadrack Agyekum, Richmond, Virginia, Court of Federal Claims No: 19–1849V
14. Debra J. Moore, Rock Island, Illinois, Court of Federal Claims No: 19–1850V
15. Donna Hyatt, Spartanburg, South Carolina, Court of Federal Claims No: 19–1851V
16. Robert P. Dipietro, Wellesley Hills, Massachusetts, Court of Federal Claims No: 19–1853V
17. Dennis Mantia, Wellesley Hills, Massachusetts, Court of Federal Claims No: 19–1854V
18. Janet Schreiber, Union, Kentucky, Court of Federal Claims No: 19–1855V
19. Barry Gabriel Broaddus, Greensburg, Pennsylvania, Court of Federal Claims No: 19–1856V
20. Jermaine A. Hampton, Waupun, Wisconsin, Court of Federal Claims No: 19–1857V
21. Kara Hinkley, Asheville, North Carolina, Court of Federal Claims No: 19–1858V
22. Maria Cristina Nargi, New York, New York, Court of Federal Claims No: 19–1859V
23. Kenneth J. Wojewocki, Lockport, Illinois, Court of Federal Claims No: 19–1860V
24. Kevin T. Gaines, Akron, Ohio, Court of Federal Claims No: 19–1861V
25. Joshua Schulz, San Antonio, Texas, Court of Federal Claims No: 19–1863V
26. Andrea Ellington, Beavercreek, Ohio, Court of Federal Claims No: 19–1866V
27. Jacquelyn Dunaway Ferguson, Roseville, California, Court of Federal Claims No: 19–1867V
28. Sherri McCoyle, Marion, North Carolina, Court of Federal Claims No: 19–1870V
29. Holly C. Freed, St. Cloud, Minnesota, Court of Federal Claims No: 19–1871V
30. Meridith Vaughan, Oshkosh, Wisconsin, Court of Federal Claims No: 19–1872V
31. Kathleen Almodova on behalf of A. A., Elizabeth City, North Carolina, Court of Federal Claims No: 19–1873V
32. Kerry Ann Neff on behalf of A. N., Chattanooga, Tennessee, Court of Federal Claims No: 19–1875V
33. Lisa Meirndorf, Pinckney, Michigan, Court of Federal Claims No: 19–1876V
34. Gary Zegarelli, Utica, New York, Court of Federal Claims No: 19–1877V
35. Catherine Grace Boss, Los Angeles, California, Court of Federal Claims No: 19–1879V
36. Catherine Grace Boss, Los Angeles, California, Court of Federal Claims No: 19–1880V
37. Catherine Grace Boss, Los Angeles, California, Court of Federal Claims No: 19–1881V
38. Toni Jefferson, East Norriton, Pennsylvania, Court of Federal Claims No: 19–1882V
39. Frances A. Vaccaro, Summerville, South Carolina, Court of Federal Claims No: 19–1883V
40. Juanita Chaplin, Camp Springs, Maryland, Court of Federal Claims No: 19–1884V
41. Issam Jubil on behalf of R. J., Norwood, Massachusetts, Court of Federal Claims No: 19–1885V
42. Julia White, Rock Hill, South Carolina, Court of Federal Claims No: 19–1886V
43. Mary Sutton, Liberty, North Carolina, Court of Federal Claims No: 19–1887V

44. Chandler K. Nitzke, Ripon, Wisconsin, Court of Federal Claims No: 19–1889V
45. Elaine Gosnell, Spartanburg, South Carolina, Court of Federal Claims No: 19–1890V
46. Lisa Helfrich, Lancaster, Pennsylvania, Court of Federal Claims No: 19–1895V
47. Diane Roeder on behalf of M. M. R., Glendale, California, Court of Federal Claims No: 19–1897V
48. Victor Waggoner, Spokane, Washington, Court of Federal Claims No: 19–1900V
49. Ernestina Hernandez, Gardena, California, Court of Federal Claims No: 19–1901V
50. Kenneth P. Starace, Brooklyn, New York, Court of Federal Claims No: 19–1902V
51. Tony Harris, Dallas, Texas, Court of Federal Claims No: 19–1903V
52. George Moore, Wilson, North Carolina, Court of Federal Claims No: 19–1904V
53. Micah Parten and Jillian Parten on behalf of P. P., Mobile, Alabama, Court of Federal Claims No: 19–1906V
54. Maggie Vollenweider, Hammond, Louisiana, Court of Federal Claims No: 19–1909V
55. Betty Knight, Decatur, Texas, Court of Federal Claims No: 19–1910V
56. Sarah Tan, St. Louis, Missouri, Court of Federal Claims No: 19–1911V
57. Stephanie Scotto, Edison, New Jersey, Court of Federal Claims No: 19–1912V
58. Audrey Clapp, Harriman, Tennessee, Court of Federal Claims No: 19–1913V
59. Sarah Griffore, Alpena, Michigan, Court of Federal Claims No: 19–1914V
60. Garland Carter, Camden, New Jersey, Court of Federal Claims No: 19–1915V
61. Robert McCabe, Northfield, New Jersey, Court of Federal Claims No: 19–1916V
62. Debra Cain, Colorado Springs, Colorado, Court of Federal Claims No: 19–1917V
63. Maria L. Ison, Batesville, Indiana, Court of Federal Claims No: 19–1918V
64. Colleen Sexton, Boston, Massachusetts, Court of Federal Claims No: 19–1919V
65. Mary McNear, Newark, New Jersey, Court of Federal Claims No: 19–1920V
66. Laura Putman on behalf of B. P., Martinsburg, West Virginia, Court of Federal Claims No: 19–1921V
67. Leslie Woolard, Atlantic, North Carolina, Court of Federal Claims No: 19–1922V
68. Mariah Wallace, Watertown, New York, Court of Federal Claims No: 19–1923V
69. Janice Berkow, Hickory, North Carolina, Court of Federal Claims No: 19–1925V
70. Lisa Adams, Columbia, South Carolina, Court of Federal Claims No: 19–1926V
71. Ana Bruno Garcia, Milford, Connecticut, Court of Federal Claims No: 19–1927V
72. Haley Tylkowski, Cayman Tylkowski and the Estate of O. W. T. on behalf of O. W. T., Deceased, Tulsa, Oklahoma, Court of Federal Claims No: 19–1929V
73. Eric Robertson, Cameron, North Carolina, Court of Federal Claims No: 19–1931V
74. Brenda Hundley, Richmond, Virginia, Court of Federal Claims No: 19–1934V
75. Sorah Kline and Nathan M. Kline on behalf of R. K., New York, New York, Court of Federal Claims No: 19–1936V
76. Holly F. Kahler, Marysville, Washington, Court of Federal Claims No: 19–1938V
77. Carl E. Dean, Cleveland, Ohio, Court of Federal Claims No: 19–1940V
78. Jessica J. Hein, Waterloo, Iowa, Court of Federal Claims No: 19–1943V
79. Gabriel Mejias, Atlantic City, New Jersey, Court of Federal Claims No: 19–1944V
80. Liana Asbury, Concord, New Hampshire, Court of Federal Claims No: 19–1945V
81. Glenda Kellett, Flowery Branch, Georgia, Court of Federal Claims No: 19–1946V
82. Sherri Staveski, Hudson, Florida, Court of Federal Claims No: 19–1949V
83. Elisa Garcia, Boston, Massachusetts, Court of Federal Claims No: 19–1952V
84. Randy Woodrow Nolen, Shreveport, Louisiana, Court of Federal Claims No: 19–1953V
85. Mackenzie Cramer, Richfield, Minnesota, Court of Federal Claims No: 19–1954V
86. Christopher Logan Silva, New Hyde Park, New York, Court of Federal Claims No: 19–1955V
87. Willa Lau, Sioux City, Iowa, Court of Federal Claims No: 19–1956V
88. Angela Quinn Cross, Alturas, California, Court of Federal Claims No: 19–1958V
89. Marva Beck, Knoxville, Tennessee, Court of Federal Claims No: 19–1959V
90. Virginia Bennett, Colorado Spring, Colorado, Court of Federal Claims No: 19–1963V
91. Heather Berman, Boca Raton, Florida, Court of Federal Claims No: 19–1965V
92. Brian Stromer, New York, New York, Court of Federal Claims No: 19–1969V
93. Megan Swanzer, Elyria, Ohio, Court of Federal Claims No: 19–1970V
94. Sharoll Critten, Dothan, Alabama, Court of Federal Claims No: 19–1971V
95. Timothy Elenteny, Boulder, Colorado, Court of Federal Claims No: 19–1972V
96. Percy Glanville, Boston, Massachusetts, Court of Federal Claims No: 19–1973V
97. Christina Lepre, East Boston, Massachusetts, Court of Federal Claims No: 19–1974V
98. Brenda Burciago, Manteca, California, Court of Federal Claims No: 19–1975V
99. Eugene Murray, Jonesboro, Georgia, Court of Federal Claims No: 19–1976V
100. Terry Klausen, Rochester, Michigan, Court of Federal Claims No: 19–1977V
101. Terry Klausen, Rochester, Michigan, Court of Federal Claims No: 19–1978V
102. Christina K. Fee, Ellwood City, Pennsylvania, Court of Federal Claims No: 19–1979V
103. Joseph Rubino, Nesconset, New York, Court of Federal Claims No: 19–1980V
104. Karen Godwin, Ames, Iowa, Court of Federal Claims No: 19–1981V
105. Amanda Kirby on behalf of C. K., Voorhees, New Jersey, Court of Federal Claims No: 19–1983V
106. Bobby Hulon, Fayetteville, North Carolina, Court of Federal Claims No: 19–1985V
107. Charlee Mitchell, Trussville, Alabama, Court of Federal Claims No: 19–1987V
108. Angelica Davila, Boston, Massachusetts, Court of Federal Claims No: 19–1988V
109. Robin O'Brien, Hudson, New Hampshire, Court of Federal Claims No: 19–1989V
110. Amy McCallum, Wyoming, Michigan, Court of Federal Claims No: 19–1991V
111. Thomas Ahartz, Las Vegas, Nevada, Court of Federal Claims No: 19–1992V
112. Alma Nelson, Spokane, Washington, Court of Federal Claims No: 19–1993V
113. Patrick Shediak, Kettering, Ohio, Court of Federal Claims No: 19–1994V
114. Barry Fuller, Mukilteo, Washington, Court of Federal Claims No: 19–1995V

115. Bruce Isenor, New Prague, Minnesota, Court of Federal Claims No: 19–1996V
116. Tracy Renee Ruddy, Auburn, California, Court of Federal Claims No: 19–1998V
117. William Gadd, Fullerton, California, Court of Federal Claims No: 19–2001V
118. Diane D'Amico, Boardman, Ohio, Court of Federal Claims No: 19–2003V
119. Matthew An, Los Angeles, California, Court of Federal Claims No: 19–2004V
120. Wesley Dumas, New York, New York, Court of Federal Claims No: 19–2007V
121. Deborah Wood, White Plains, New York, Court of Federal Claims No: 19–2008V
122. Richard Robinson, Boston, Massachusetts, Court of Federal Claims No: 19–2011V
123. Thomas Jeffrey Mickles, Greensboro, North Carolina, Court of Federal Claims No: 19–2012V
124. Rosita Smith, Dresher, Pennsylvania, Court of Federal Claims No: 19–2013V
125. Trevor Howell, Washington, District of Columbia, Court of Federal Claims No: 19–2015V
126. Kimberly Draeger, Milwaukee, Wisconsin, Court of Federal Claims No: 19–2016V
127. Howard C. Wilinsky, M.D., Buffalo, New York, Court of Federal Claims No: 19–2017V
128. Troy J. Bodak, Sioux City, Iowa, Court of Federal Claims No: 19–2019V
129. Alice Rivas, Cheyenne, Wyoming, Court of Federal Claims No: 19–2020V
130. Donald Doerksen on behalf of Fredda Doerksen, Deceased, Cheyenne, Wyoming, Court of Federal Claims No: 19–2021V
131. Eric Kurtz, M.D., Boston, Massachusetts, Court of Federal Claims No: 19–2022V

[FR Doc. 2020–06629 Filed 3–30–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Reimbursement of Travel and Subsistence Expenses Toward Living Organ Donation Program Eligibility Guidelines

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice; request for public comment.

SUMMARY: HRSA published the final eligibility guidelines for the Reimbursement of Travel and Subsistence Expenses toward Living Organ Donation Program (herein referred to as Program) in the **Federal Register** on October 5, 2007. HRSA is requesting public comment concerning proposed changes to the guidelines to: increase the household income eligibility threshold to 350% (currently, the threshold is 300%) for living organ donors and organ recipients, clarify the use of the existing preference categories in relation to the proposed household income eligibility threshold, and clarify that travel and subsistence expenses incurred by non-directed living organ donors qualify as reimbursable expenses under the Program. HRSA is also proposing to revise the Program eligibility guideline's background section to ensure that the information aligns with the Program's legislative authority. These proposed guidelines would apply to the Program regardless of the awardee of the cooperative agreement that administers the Program.

DATES: Written comments must be submitted to the office in the address section below by mail or email on or before April 30, 2020.

ADDRESSES: Please send all written comments to Frank Holloman, Director, Division of Transplantation, Healthcare Systems Bureau, HRSA, 5600 Fishers Lane, Room 08W53A, Rockville, Maryland 20857; telephone (301) 443–7577; or email: *donation@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Holloman, Director, Division of Transplantation, Healthcare Systems Bureau, HRSA, 5600 Fishers Lane, Room 08W53A, Rockville, Maryland 20857; telephone (301) 443–7577; or email *donation@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Program is to reimburse travel and subsistence expenses and other incidental non-medical expenses that the Secretary of HHS may authorize by regulation to living organ donors and up to two relatives or other individuals accompanying the living donor in the United States. Under the statutory authority for the Program, if an organ recipient can reasonably be expected to pay the living organ donor's travel and subsistence expenses related to the organ donation, reimbursement of such expenses through the Program is prohibited. The current eligibility guidelines further clarify that to be eligible for donor reimbursement, the organ recipient's household income must not exceed 300 percent of the HHS Poverty Guidelines in effect at the time of the eligibility determination. Alternatively, if the organ recipient's household income exceeds the threshold, he/she can be eligible to participate in the Program if the individual can demonstrate financial hardship. In addition, the Program uses a household income threshold of 300 percent of the HHS Poverty Guidelines in effect at the time of the eligibility determination to prioritize reimbursement for prospective living organ donors based on an assessment that donors whose income is below that threshold are less likely to be able to cover qualified expenses under the Program.

At the inception of the Program in 2007, HRSA proposed a household income eligibility threshold of 200 percent of the HHS Poverty Guidelines; however, after reviewing and considering the public comments received, HRSA set the Program's initial threshold at 300 percent of household income. HRSA further determined, based on public comment, that organ recipients whose income exceeded this level were reasonably able to reimburse living organ donors for travel and subsistence expenses as well as for other qualifying expenses authorized by the Secretary of HHS, unless the recipients demonstrated financial hardship. HRSA also established that donors whose incomes fell below this threshold should receive preference over donors whose incomes exceeded this threshold.

The Program's eligibility guidelines have not been amended since 2009. With the annual number of waiting list deaths hovering between 6,000 and 7,000 since 2001, the transplant community continues to look to living organ donation as a life-saving option for patients in need of organ transplants, particularly kidney and liver transplants. As of December 31, 2019, approximately 84 percent of the nearly 113,000 individuals on the national transplant waiting list were waiting for a kidney transplant. Even with a record number of close to 40,000 organ transplants performed in the United States in 2019, including almost 7,400 living donor transplants, the gap between demand and availability of organs persists.

In May 2019, the Advisory Committee on Organ Transplantation (ACOT) made several recommendations regarding support to living organ donors. ACOT advises and provides recommendations to the Secretary through the HRSA Administrator on all aspects of organ donation, procurement, allocation, and transplantation. ACOT offered three recommendations aimed at amending the Program's eligibility guidelines to allow for increased access. ACOT recommended increasing the household income eligibility threshold to 500 percent of the Federal Poverty Limit, waiving income verification when reimbursements do not exceed $500, and making non-directed donors eligible for reimbursement through the Program if other program requirements are satisfied.

The Executive Order on Advancing American Kidney Health, issued on July 10, 2019, provides increased support for living donors with the goal of increasing the supply of transplantable kidneys (*https://www.whitehouse.gov/presidential-actions/executive-order-advancing-american-kidney-health/*). Section 8 of the Executive Order requires the Secretary of HHS to, in part, ''. . . raise the limit on the income of donors eligible for reimbursement under the [P]rogram.''

In addition to proposing an increase in income eligibility for the reimbursement program through this notice, on December 20, 2019, HRSA published a notice of proposed rulemaking designed to further reduce financial barriers to living organ donation by expanding the list of reimbursable costs to include lost wages and child-care and elder-care expenses (84 FR 70139).

In furtherance of the Executive Order and in light of the ACOT recommendations, as well as budgetary constraints, HRSA proposes amending the Program eligibility guidelines as follows:

1. Increasing the household income eligibility threshold for organ recipients and prospective living organ donors from the current 300 percent of the HHS Poverty Guidelines to 350 percent of the HHS Poverty Guidelines in effect at the time of eligibility determination;

2. clarifying the use of the existing preference categories in relation to the proposed income eligibility threshold; and

3. amending the qualifying expenses section of the eligibility guidelines to allow the Program to reimburse eligible non-directed donors for qualifying expenses.

Under the first proposed change, the revised income eligibility threshold will cover applicants living in nearly 70 percent of the households in the United States and potentially increase an important source of life-saving organ transplants for the men, women, and children on the national transplant waiting list by reducing financial barriers to living organ donation. As this proposal would increase the income eligibility threshold for organ recipients, and given that reimbursement under the Program is not permitted if Program expenses can reasonably be expected to be covered by organ recipients, HRSA is specifically seeking input from the public regarding whether an organ recipient's reasonable ability to pay for a donor's expenses should remain tied to the Program's income eligibility threshold and whether or not the proposed threshold is appropriate and/or justified. In 2019, the HHS Poverty Guideline for a family of four was $25,750.

The second proposal is to clarify how the Program will use the existing preference categories in relation to the proposed income eligibility threshold. The Program is currently stratified into 4 preference categories, which play a role in prioritizing applicants: (1) Both donor's and recipient's incomes are below the threshold; (2) recipient's income is below the threshold but donor demonstrates financial hardship; (3) recipient's income is below the threshold regardless of donor's income; and (4) recipient's income is above the threshold but demonstrates financial hardship regardless of the donor's income. Under this proposal, the Program will accept applications primarily from preference category 1, both donor and recipient household incomes at or below 350 percent of the HHS Poverty Guidelines. However, the Program may accept applications from each subsequent category as funds become available. The Program will inform participating transplant programs directly and the public via the Program's website whenever it plans to accept or stop accepting applications from the other preference categories.

This proposed change will help ensure that HRSA, through this Program, supports individuals in need of life-saving transplants who are unable to pay for their living donors' travel and related expenses, as required by the Program's authorizing legislation. In addition, the proposed change will enable living organ donors who are unable to afford these expenses to receive preference, as required by the Program's authorizing legislation. HRSA is proposing this change to ensure that the Program meets its statutory requirement to support donor and recipient pairs with the greatest financial needs. The Program will regularly track percentages of funds spent against percentages of the funds remaining for the budget year.

The third proposed change is to amend the qualifying expenses section of the eligibility guidelines to allow the Program to reimburse eligible non-directed donors for qualifying expenses when the intended transplant recipient cannot be identified prior to the donation process. Living organ donations can be either ''directed'' (the organ is intended for an individual named or specified by the living organ donor), or ''non-directed'' (the organ is intended for an individual neither named nor specified by the donor) as defined at *https://optn.transplant.hrsa.gov/resources/ethics/living-non-directed-organ-donation/.* Currently, a non-directed living organ donor can only be reimbursed for qualified expenses if the intended recipient is identified prior to the donation process and the intended recipient meets the Program eligibility requirements, including family household income. Under the proposed change, all non-directed donors will be eligible for reimbursement for qualified expenses. This proposed change will allow the Program to support non-directed donors without considering the income eligibility of intended transplant recipients, if all other donor eligibility criteria are met. Removing this financial barrier is expected to increase the number of non-directed donors, who often donate anonymously with altruistic motives. In addition, because non-directed donors serve as catalysts for paired donation kidney chains, this proposed change would provide increased access to life-saving organ transplants to more patients on the waiting list.

Additionally, HRSA is proposing to revise the Program eligibility guidelines' background section to ensure that the information aligns with the Program's legislative authority. The background section includes information about the current awardee of the cooperative agreement and the mechanism used by the awardee to administer this national program. This proposed change will ensure that the background covers only the legislative requirements for this Program without focusing on the award recipient. This will eliminate the need to revise the Program eligibility guidelines in the event of a change to the awardee of the cooperative agreement.

These proposed changes to the eligibility guidelines, if implemented, would provide increased access to life-saving organ transplants to the thousands of men, women, and children on the national transplant waiting list by reducing financial barriers for the individuals who wish to become living organ donors. These proposed changes are in accordance with the legislative authority codified at section 377 of the Public Health Service Act, 42 U.S.C.

274f, and the Executive Order on Advancing American Kidney Health issued on July 10, 2019.

Thomas J. Engels,

Administrator.

[FR Doc. 2020–06628 Filed 3–30–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, March 24, 2020, 12:00 p.m. to March 24, 2020, 05:00 p.m., National Institutes of Health, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on March 13, 2020, 85 FR 14690.

This meeting is being amended to change the date from March 24, 2020 to March 31, 2020. The meeting is closed to the public.

Dated: March 25, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–06692 Filed 3–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) I Review.

Date: May 18–19, 2020.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W116; Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W116, National Cancer Institute, Rockville, MD 20892–9750, 240–276–5413, *Klaus.Piontek@Nih.Gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) II Review.

Date: May 19–20, 2020.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, 7W244 Rockville, MD 20850 (Telephone Conference Call).

Contact Person: John Paul Cairns, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, 9609 Medical Center Drive, Room 7W244, National Cancer Institute, NIH, Bethesda, MD 20892, 240–276–5415, *paul.cairns@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE (P50) III Review.

Date: May 20–21, 2020.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W122, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Anita T. Tandle, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Bethesda, MD 20892, 240–276–5085, *Tandlea@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Quantitative Imaging Tools and Methods.

Date: May 21, 2020.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W640, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Saejeong J. Kim, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W640, Rockville, MD 20850, 240–276–7684, *saejeong.kim@nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee I—Transition to Independence.

Date: June 10–11, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W602, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Delia Tang, M.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute. NIH, 9609 Medical Center Drive, Room 7W602, Bethesda, MD 20892, 240–276–6456, *tangd@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 25, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–06691 Filed 3–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review; Group Kidney, Urologic and Hematologic Diseases D Subcommittee; DDK–D October 2020 Council.

Date: June 23–25, 2020.

Time: 5:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 496–9010 *hoffertj@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 25, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–06605 Filed 3–30–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines). A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines. If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter. This notice is also available on the internet at *https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list.*

FOR FURTHER INFORMATION CONTACT: Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240–276–2600 (voice); *Anastasia.Donovan@samhsa.hhs.gov* (email).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs for oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that the test facility has met minimum standards. HHS does not allow IITFs for oral fluid testing.

HHS-Certified Laboratories Certified To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

HHS-Certified Instrumented Initial Testing Facilities Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780–784–1190. (Formerly: Gamma-Dynacare Medical Laboratories).

HHS-Certified Laboratories Certified To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823. (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130. (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Cordant Health Solutions, 2617 East L Street, Tacoma, WA 98421, 800–442–0438. (Formerly: STERLING Reference Laboratories).

Desert Tox, LLC, 10221 North 32nd Street Suite J, Phoenix, AZ 85028, 602–457–5411.

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890.

Dynacare,* 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP

Continued

679–1630, (Formerly: Gamma-Dynacare Medical Laboratories).
ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.
Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).
Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).
Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).
LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).
Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.
MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only.
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.
Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840.
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159.
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only.

may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anastasia Marie Donovan,

Policy Analyst.

[FR Doc. 2020–06687 Filed 3–30–20; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2020–0097]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0087

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0087, U.S. Coast Guard International Ice Patrol (IIP) Customer Survey; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before June 1, 2020.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2020–0097] to the Coast Guard 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.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2020–0097], and must be received by June 1, 2020.

Submitting Comments

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,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *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.

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, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: U.S. Coast Guard International Ice Patrol (IIP) Customer Survey.

OMB Control Number: 1625–0087.

Summary: This information collection provides feedback on the processes of delivery and products distributed to the mariner by the International Ice Patrol.

Need: In accordance with Executive Order 12862, the U.S. Coast Guard is directed to conduct surveys (both qualitative and quantitative) to determine the kind and quality of services our customers want and expect, as well as their satisfaction with USCG's existing services. This survey will be limited to data collections that solicit strictly voluntary opinions and will not collect information that is required or regulated.

Forms: CG–16700, North American Ice Service (NAIS) Customer Survey.

Respondents: CG–16700, North American Ice Service (NAIS) Customer Survey.

Frequency: Annually.

Hour Burden Estimate: The burden is estimated to be 120 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: March 25, 2020.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2020–06630 Filed 3–30–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957000–20X–L14400000–BX0000]

Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file plats of survey 30 calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming. The surveys, which were executed at the request of the BLM and the United States Forest Service are necessary for the management of these lands.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing by April 30, 2020.

ADDRESSES: You may submit written protests to the Wyoming State Director at WY957, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

A person or party who wishes to protest one or more plats of survey identified below must file a written notice of protest within 30 calendar days from the date of this publication with the Wyoming State Director at the above address. Any notice of protest received after the scheduled date of official filing will be untimely and will not be considered. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat. Before including your address, phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Sonja Sparks, BLM Wyoming Chief Cadastral Surveyor at 307–775–6225 or *s75spark@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact this office during normal business hours. The Service is available 24 hours a day, 7 days a week, to leave a message or question with this office. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Wyoming State Office, Cheyenne, Wyoming.

Sixth Principal Meridian, Wyoming

All plats of survey in this notice of official filing were accepted March 25, 2020

T. 52 N., R. 66 W., Group No. 934, dependent resurvey and survey
T. 20 N., R. 109 W., Group No. 973, dependent resurvey and survey
T. 16 N., R. 86 W., Group No. 989, dependent resurvey and survey
T. 18 N., R. 78 W., Group No. 990, dependent resurvey and survey
T. 44 N., R. 60 W., Group No. 992, dependent resurvey
T. 48 N., R. 63 W., Group No. 993, dependent resurvey and survey
T. 45 N., R. 77 W., Group No. 994, corrective dependent resurvey
T. 46 N., R. 78 W., Group No. 995, corrective dependent resurvey
T. 40 N., R. 117 W., Group No. 996, corrective dependent resurvey and dependent resurvey
T. 30 N., R. 111 W., Group No. 1021, supplemental survey
T. 49 N., R. 105 W., Group No. 1023, supplemental survey
T. 50 N., R. 105 W., Group No. 1023, supplemental survey

Copies of the preceding described plats and field notes are available to the public at a cost of $4.20 per plat and $0.15 per page of field notes. Requests can be made to *blm_wy_survey_records@blm.gov* or by telephone at 307–775–6222.

Dated: March 25, 2020.

Sonja S. Sparks,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2020–06670 Filed 3–30–20; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 201R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of contract actions.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; *mkelly@usbr.gov;* telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports.

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
XM Extraordinary maintenance
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
OM&R Operation, Maintenance, and Replacement
P–SMBP Pick-Sloan Missouri Basin Program
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

Columbia–Pacific Northwest—Interior Region 9: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. *Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming:* Temporary or interim irrigation and M&I water service, water storage, water right settlement, exchange, miscellaneous use, or water replacement contracts to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. *Rogue River Basin Water Users, Rogue River Basin Project, Oregon:* Water service contracts; $8 per acre-foot per annum.

3. *Willamette Basin Water Users, Willamette Basin Project, Oregon:* Water service contracts; $8 per acre-foot per annum.

4. *Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company,*

Wapinitia Project, Oregon; and Whitestone Reclamation District, Chief Joseph Dam Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. *Nine water user entities of the Arrowrock Division, Boise Project, Idaho:* Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of the reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

6. *Three irrigation water user entities, Rogue River Basin Project, Oregon:* Long-term contracts for exchange of water service with three entities for the provision of up to 292 acre-feet of stored water from Applegate Reservoir (a USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use.

7. *Conagra Foods Lamb Weston, Inc., Columbia Basin Project, Washington:* Miscellaneous purposes water service contract providing for the delivery of up to 1,500 acre-feet of water from the Scooteney Wasteway for effluent management.

8. *Benton ID, Yakima Project, Washington:* Replacement contract to, among other things, withdraw Benton ID from the Sunnyside Division Board of Control; provide for direct payment of Benton ID's share of total operation, maintenance, repair, and replacement costs incurred by the United States in operation of storage division; and establish Benton ID responsibility for operation, maintenance, repair, and replacement for irrigation distribution system.

9. *Burley and Minidoka IDs, Minidoka Project, Idaho:* Supplemental and amendatory contracts to transfer the O&M of the Main South Side Canal Headworks to Burley ID and transfer the O&M of the Main North Side Canal Headworks to Minidoka ID.

10. *Clean Water Services and Tualatin Valley ID, Tualatin Project, Oregon:* Long-term water service contract that provides for the District to allow Clean Water Services to beneficially use up to 6,000 acre-feet annually of stored water for water quality improvement.

11. *Willow Creek District Improvement Company, Willow Creek Project, Oregon:* Amend contract to increase the amount of storage water made available under the existing long-term contract from 2,500 to 3,500 acre-feet.

12. *Stanfield ID, Umatilla Basin Project, Oregon:* A short-term water service contract to provide for the use of conjunctive use water, if needed, for the purposes of pre-saturation or for such use in October to extend their irrigation season.

13. *Falls ID, Michaud Flats Project, Idaho:* Amendment to contract No. 14–06–100–851 to authorize the District to participate in State water rental pool.

14. *Roza ID, Yakima Project, Washington:* Contract for use of water in dead space of Kachess Reservoir and construction of a pumping plant.

15. *Quincy-Columbia Basin ID, Columbia Basin Project, Washington:* Long-term contract to renew master water service contract No. 14–06–100–9166, as supplemented, to authorize the District to deliver project water to up to 10,000 First Phase Continuation Acres located within the District, and to deliver additional project water to land irrigated under the District's repayment contract during the peak period of irrigation water use annually.

16. *Water user entities responsible for repayment of reimbursable project construction costs in Idaho, Washington, Oregon, Montana, and Wyoming:* Contracts for conversion or prepayment executed pursuant to the Water Infrastructure Improvements for the Nation Act, Public Law 114–322, Sec. 4011(a–d).

Completed contract actions:

1. *(9) City of Prineville and Ochoco ID, Crooked River Project, Oregon:* Long-term contract to provide the City of Prineville with a mitigation water supply from Prineville Reservoir; with Ochoco ID anticipated to be a party to the contract, as they are responsible for O&M of the dam and reservoir. Contract was executed on October 30, 2019.

2. *(13) East Columbia Basin ID, Columbia Basin Project, Washington:* Amendment of renewal master water service contract No. 159E101882, to authorize up to an additional 70,000 acres within the East Columbia ID that are located within the Odessa Subarea and eligible to participate in the Odessa Groundwater Replacement Program, to receive Columbia Basin Project irrigation water service; and to provide for additional acreage development through future water conservation measures. Contract was executed on October 11, 2019.

California-Great Basin—Interior Region 10: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. *Irrigation water districts, individual irrigators, M&I and miscellaneous water users; California, Nevada, and Oregon:* Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of excess capacity in project facilities for terms up to 5 years; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually.

2. *Contractors from the American River Division, Delta Division, Cross Valley Canal, San Felipe Division, West San Joaquin Division, San Luis Unit, and Elk Creek Community Services District; CVP; California:* Renewal of 30 interim and long-term water service contracts; water quantities for these contracts total in excess of 2.1M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

3. *Redwood Valley County WD, SRPA, California:* Restructuring the repayment schedule pursuant to Public Law 100–516.

4. *Sutter Extension WD, Delano-Earlimart ID, Pixley ID, the State of California Department of Water Resources, and the State of California Department of Fish and Wildlife; CVP; California:* Pursuant to Public Law 102–575, agreements with non-Federal entities for the purpose of providing funding for Central Valley Project Improvement Act refuge water conveyance and/or facilities improvement construction to deliver water for certain Federal wildlife refuges, State wildlife areas, and private wetlands.

5. *CVP Service Area, California:* Temporary water acquisition agreements for purchase of 5,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by Public Law 102–575 for terms of up to 5 years.

6. *Horsefly, Klamath, Langell Valley, and Tulelake IDs; Klamath Project; Oregon:* Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract.

7. *Warren Act Contracts, CVP, California:* Execution of long-term Warren Act contracts (up to 40 years) with various entities for conveyance of non-project water in the CVP.

8. *Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California:* Long-term water service

contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly a long-term contract for storage of non-project water in New Melones Reservoir.

9. *Madera-Chowchilla Water and Power Authority, CVP, California:* Agreement to transfer the OM&R and certain financial and administrative activities related to the Madera Canal and associated works.

10. *Pershing County Water Conservation District, Pershing County, and Lander County; Humboldt Project; Nevada:* Title transfer of lands and features of the Humboldt Project.

11. *Mendota Wildlife Area, CVP, California:* Reimbursement agreement between the California Department of Fish and Wildlife and Reclamation for conveyance service costs to deliver Level 2 water to the Mendota Wildlife Area during infrequent periods when the Mendota Pool is down due to unexpected but needed maintenance. This action is taken pursuant to Public Law 102–575, Title 34, Section 3406(d)(1), to meet full Level 2 water needs of the Mendota Wildlife Area.

12. *San Luis WD, CVP, California:* Proposed partial assignment of 2,400 acre-feet of the District's CVP supply to Santa Nella County WD for M&I use.

13. *Placer County Water Agency, CVP, California:* Proposed exchange agreement under section 14 of the 1939 Act to exchange up to 71,000 acre-feet annually of the Agency's American River Middle Fork Project water for use by Reclamation, for a like amount of CVP water from the Sacramento River for use by the Agency.

14. *Irrigation contractors, Klamath Project, Oregon:* Amendment of repayment contracts or negotiation of new contracts to allow for recovery of additional capital costs.

15. *Orland Unit Water User's Association, Orland Project, California:* Repayment contract for the SOD costs assigned to the irrigation of Stony Gorge Dam.

16. *City of Santa Barbara, Cachuma Project, California:* Execution of a temporary contract and a long-term Warren Act contract with the City for conveyance of non-project water in Cachuma Project facilities.

17. *Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon:* Contracts for extraordinary maintenance and replacement funded pursuant to ARRA. Added costs to rates to be collected under irrigation and interim M&I ratesetting policies.

18. *Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon:* Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

19. *Cachuma Operation and Maintenance Board, Cachuma Project, California:* Amendment to SOD contract No. 01–WC–20–2030 to provide for increased SOD costs associated with Bradbury Dam.

20. Reclamation will become signatory to a three-party conveyance agreement with the Cross Valley Contractors and the California State Department of Water Resources for conveyance of Cross Valley Contractors' CVP water supplies that are made available pursuant to long-term water service contracts.

21. *Westlands WD, CVP, California:* Negotiation and execution of a long-term repayment contract to provide reimbursement of costs related to the construction of drainage facilities. This action is being undertaken to satisfy the Federal Government's obligation to provide drainage service to lands within the San Luis Unit of the CVP including the Westlands WD service area.

22. *San Luis WD, Meyers Farms Family Trust, and Reclamation; CVP; California:* Revision of an existing contract among San Luis WD, Meyers Farms Family Trust, and Reclamation providing for an increase in the exchange of water from 6,316 to 10,526 acre-feet annually and an increase in the storage capacity of the bank to 60,000 acre-feet.

23. *Contra Costa WD, CVP, California:* Amendment to an existing O&M agreement to transfer O&M of the Contra Costa Rock Slough Fish Screen to the Contra Costa WD. Initial construction funding provided through ARRA.

24. *Irrigation water districts, individual irrigators and M&I water users, CVP, California:* Temporary water service contracts for terms not to exceed 1 year for up to 100,000 acre-feet of surplus supplies of CVP water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged flood flows of short duration.

25. *Irrigation water districts, individual irrigators, M&I and miscellaneous water users, CVP, California:* Temporary Warren Act contracts for terms up to 5 years providing for use of excess capacity in CVP facilities for annual quantities exceeding 10,000 acre-feet.

26. *City of Redding, CVP, California:* Proposed partial assignment of 30 acre-feet of the City of Redding's CVP water supply to the City of Shasta Lake for M&I use.

27. *Sacramento River Division, CVP, California:* Administrative assignments of various Sacramento River Settlement Contracts.

28. *California Department of Fish and Game, CVP, California:* To extend the term of and amend the existing water service contract for the Department's San Joaquin Fish Hatchery to allow an increase from 35 to 60 cubic feet per second of continuous flow to pass through the Hatchery prior to it returning to the San Joaquin River.

29. *Santa Clara Valley WD (now called Valley Water), CVP, California:* Second amendment to Santa Clara Valley WD's water service contract to add CVP-wide form of contract language providing for mutually agreed upon point or points of delivery.

30. *PacifiCorp, Klamath Project, Oregon and California:* Transfer of O&M of Link River Dam and associated facilities. Contract will allow for the continued O&M by PacifiCorp.

31. *Tulelake ID, Klamath Project, Oregon and California:* Transfer of O&M of Station 48 and gate on Drain No. 1, Lost River Diversion Channel.

32. *Fresno County Waterworks No. 18; Friant Division, CVP; California:* Execution of an agreement to provide for the O&M of select Federal facilities by Fresno County Waterworks No. 18.

33. *U.S. Fish and Wildlife Service and Tulelake ID; Klamath Project; Oregon and California:* Water service contract for deliveries to Lower Klamath National Wildlife Refuge, including transfer of O&M responsibilities for the P Canal system.

34. *Tulelake ID, Klamath Project, Oregon and California:* Amendment of repayment contract to eliminate reimbursement for P Canal O&M costs.

35. *East Bay Municipal Utility District, CVP, California:* Long-term Warren Act contract for storage and conveyance of up to 47,000 acre-feet of water annually.

36. *Gray Lodge Wildlife Area, CVP, California:* Reimbursement agreement between the California Department of Fish and Wildlife and Reclamation for groundwater pumping costs. Groundwater will provide a portion of Gray Lodge Wildlife Area's Central Valley Improvement Act Level 4 water supplies. This action is taken pursuant to Public Law 102–575, Title 34, Section 3406(d)(1, 2 and 5), to meet full Level 4 water needs of the Gray Lodge Wildlife Area.

37. *State of Nevada, Newlands Project, Nevada:* Title transfer of lands and features of Carson Lake and Pasture.

38. *Washoe County Water Conservation District, Truckee Storage Project, Nevada:* Repayment contract for

costs associated with SOD work on Boca Dam.

39. *Santa Barbara County Water Agency, Cachuma Project, California:* Negotiation and execution of a long-term water service contract.

40. *Cachuma Operations and Maintenance Board, Cachuma Project, California:* Negotiation and execution of an O&M contract.

41. *State of California, Department of Water Resources; CVP; California:* Negotiation of a multi-year wheeling agreement with the State of California, Department of Water Resources providing for the conveyance and delivery of CVP water through the State of California's water project facilities to Byron-Bethany ID (Musco Family Olive Company), Del Puerto WD, and the San Joaquin Valley National Cemetery.

42. *Water user entities responsible for repayment of reimbursable project construction costs in California, Nevada, and Oregon:* Contracts for conversion or prepayment executed pursuant to the Water Infrastructure Improvements for the Nation Act, Public Law 114–322, Sec. 4011 (a–d).

43. *Contra Costa Water District:* Title transfer of lands and features of the Contra Costa Canal System of the CVP.

44. *Friant Water Authority, CVP, California:* Prospective future title transfer of lands and features of the Friant-Kern Canal System of the CVP.

45. *San Luis and Delta-Mendota Water Authority, CVP, California:* Renewal of OM&R contract.

46. *San Luis and Delta-Mendota Water Authority, CVP, California:* Contract for repayment for XM and replacement funded pursuant to Subtitle G of Public Law 111–11.

47. *City of West Sacramento, CVP, California:* Negotiation and execution of a 40-year long-term water service contract.

48. *Truckee-Carson Irrigation District, Newlands Project, Nevada:* An agreement to transfer title of the federally owned Old Lahontan Power Plant to the District subject to approved legislation.

49. *Truckee-Carson ID, Newlands Project, Nevada:* Negotiation and execution of an OM&R transfer agreement for the Newlands Project.

50. *Friant Water Authority, Friant Division, CVP, California:* Renewal of OM&R contract.

51. *Tehama-Colusa Canal Authority, CVP, California:* Renewal of OM&R contract.

Completed contract actions:

1. *(4) El Dorado County Water Agency, CVP, California:* M&I water service contract to supplement existing water supply. Contract will provide for an amount not to exceed 15,000 acre-feet annually authorized by Public Law 101–514 (Section 206) for El Dorado County Water Agency. The supply will be subcontracted to El Dorado ID and Georgetown Divide Public Utility District. Contract was executed on October 23, 2019.

2. *(12) Town of Fernley, State of California; City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal Interest who may have negotiated rights under Public Law 101–618; Nevada and California:* Contracts for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the Truckee River Operating Agreement. Contract was executed on April 6, 2017.

3. *(49) Wampler Ranches, LLC; Klamath Project; California and Oregon:* Contractor requested Warren Act contract cancellation from upper Klamath Lake through Crane Creek. Contract was terminated on April 19, 2019.

4. *(51) North Kern and Buena Vista Water Storage Districts, Kern River Project, California:* Contract for reimbursement of SOD costs assigned to the irrigation component of Isabella Dam. Contract was executed on June 14, 2019.

Discontinued contract action:

1. *(52) Individual, Klamath Project, Oregon:* Warren Act (Section 2) contract termination.

Lower Colorado Basin—Interior Region 8: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

1. *Milton and Jean Phillips, BCP, Arizona:* Develop a Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. *Gila Project Works, Gila Project, Arizona:* Perform title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

3. *Ogram Boys Enterprises, Inc., BCP, Arizona:* Revise Exhibit A of the contract to change the contract service area and points of diversion/delivery.

4. *City of Yuma, BCP, Arizona:* Enter into a long-term consolidated contract with the City for delivery of its Colorado River water entitlement.

5. *Gold Dome Mining Corporation and Wellton-Mohawk IDD, Gila Project, Arizona:* Terminate contract No. 0–07–30–W0250 pursuant to Articles 11(d) and 11(e).

6. *Estates of Anna R. Roy and Edward P. Roy, Gila Project, Arizona:* Terminate contract No. 6–07–30–W0124 pursuant to Article 9(c).

7. *Present Perfected Right 30 (Stephenson), BCP, California:* Offer contracts for delivery of Colorado River water to holders of miscellaneous present perfected rights as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

8. *Western Water, LLC and Ehrenberg Improvement District, BCP, Arizona:* Review and approve a proposed partial assignment and transfer of Arizona fourth-priority Colorado River water in the amount of 85 acre-feet of water per year from Western Water to the District, amend Western Water's Colorado River water delivery contract No. 16–XX–30–W0619 to decrease its Colorado River water entitlement by 85 acre-feet of water per year from 621.48 to 536.48 acre-feet of water per year, and amend the District's Colorado River water delivery contract No. 8–07–30–W0006 to increase the District's Colorado River water entitlement by 85 acre-feet of water per year from 650 to 735 acre-feet of water per year.

9. *Fort McDowell Yavapai Nation and Central Arizona Water Conservation District, CAP, Arizona:* Execute a CAP water lease for Fort McDowell Yavapai Nation to lease 3,933 acre-feet of its CAP water to Central Arizona Water Conservation District during calendar year 2020.

10. *San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona:* Execute a CAP water lease for San Carlos Apache Tribe to lease 13,068 acre-feet of its CAP water to the Town of Gilbert during calendar year 2020.

11. *San Carlos Apache Tribe and Pascua Yaqui Tribe, CAP, Arizona:* Execute a CAP water lease for San Carlos Apache Tribe to lease 1,720 acre-feet of its CAP water to Pascua Yaqui Tribe during calendar year 2020.

12. *San Carlos Apache Tribe and Stone Applications, LLC, CAP, Arizona:* Execute a CAP water lease for San Carlos Apache Tribe to lease 10,000 acre-feet of its CAP water to Stone Applications, LLC during calendar year 2020.

13. *City of Needles and The Metropolitan Water District of Southern California, Lower Colorado Water Supply Project, California:* Amend contract No. 06–XX–30–W0452 to extend the timeframe to complete a study that is required under the contract

from December 31, 2019, to December 31, 2024.

Completed contract actions:

1. *(13) San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona:* Execute a CAP water lease for the San Carlos Apache Tribe to lease 6,216 acre-feet of its CAP water to the Town of Gilbert during calendar year 2019. Lease was executed on December 2, 2019.

2. *(14) Ehrenberg Improvement District, BCP, Arizona:* Assign Ehrenberg Improvement Association's Colorado River water delivery contract No. 8–07–30–W0006, as amended, for 650 acre-feet of water per year, to the district. Assignment was executed on October 8, 2019.

Upper Colorado Basin—Interior Region 7: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. *Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico:* Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. *Contracts with various water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming:* Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11 to be executed as project progresses.

3. *Middle Rio Grande Project, New Mexico:* Reclamation continues annual leasing of water from various San Juan-Chama Project contractors to stabilize flows in a critical reach of the Rio Grande to meet the needs of irrigators and preserve habitat for the silvery minnow. Reclamation leased approximately 14,000 acre-feet of water from San Juan-Chama Project contractors in 2019.

4. *Strawberry High Line Canal Company, Strawberry Valley Project; Utah:* The Strawberry High Line Canal Company has requested to allow for the carriage of non-project water held by McMullin Orchards in the High Line Canal.

5. *Eden Valley IDD, Eden Project, Wyoming:* The Eden Valley IDD proposes to raise the level of Big Sandy Dam to fully perfect its water rights. An agreement will be necessary to obtain the authorization to modify Federal facilities.

6. *Tri-County Water Conservancy District, Dallas Creek Project, Colorado:* A contract under the Upper Colorado Recovery Program to construct and transfer O&M of a fish barrier at Ridgway Dam. The State of Colorado, Colorado Parks and Wildlife Department will also be a party to the contract.

7. *Newton Water Users Association, Newton Project; Utah:* The Utah Division of Wildlife Resources desires to install a fish screen on the outlet works of Newton Dam. This requires an agreement to approve modification to Federal Reclamation facilities.

8. *Pojoaque Valley ID, San Juan-Chama Project, New Mexico:* An amendment to the repayment contract to reflect the changed allocations of the Aamodt Litigation Settlement Act (Title VI of the Claims Resolution Act of 2010, Public Law 111–291, December 8, 2010, and Article 7 of the Settlement Agreement dated April 19, 2012) is currently under review by the Pojoaque Valley ID board.

9. *South Cache Water Users Association, Hyrum Project, Utah:* Problems with the spillway at Hyrum Dam require the construction of a new spillway under the SOD Act, as amended. A repayment contract is necessary to recover 15 percent of the construction costs in accordance with the SOD Act.

10. *Dolores Water Conservancy District, Dolores Project, Colorado:* The District has requested a water service contract for 1,402 acre-feet of newly identified project water for irrigation. The proposed water service contract will provide 417 acre-feet of project water for irrigation of the Ute Enterprise and 985 acre-feet for use by the District's full-service irrigators.

11. *State of Wyoming, Seedskadee Project; Wyoming:* The Wyoming Water Development Commission is interested in purchasing an additional 65,000 acre-feet of M&I water from Fontenelle Reservoir. Reclamation and the State of Wyoming are pursuing entering into a Contributed Funds Act agreement which allows the State to advance funds to Reclamation associated with activities involved in contracting for remaining available M&I water as specified in Section 4310 of Public Law 115–270.

12. *Ute Indian Tribe of the Uinta and Ouray Reservation, CUP, Utah:* The Ute Indian Tribe of the Uinta and Ouray Reservation has requested the use of excess capacity in the Strawberry Aqueduct and Collection System, as authorized in the CUP Completion Act legislation.

13. *Ute Indian Tribe of the Uinta and Ouray Reservation; Flaming Gorge Unit, CRSP; Utah:* As part of discussions on settlement of a potential compact, the Ute Indian Tribe of the Uinta and Ouray Reservation has indicated interest in storage of its potential water right in Flaming Gorge Reservoir.

14. *State of Utah; Flaming Gorge Unit, CRSP; Utah:* The State of Utah has requested contracts that will allow the full development and use of the CUP Ultimate Phase water right of 158,000 acre-feet of depletion, which was previously assigned to the State of Utah. A contract for 72,641 acre-feet was executed March 20, 2019. A contract for the remaining 86,249 acre-feet has been negotiated and is awaiting completion of NEPA activities.

15. *Weber Basin Water Conservancy District, Weber Basin Project, Utah:* The District has requested permission to install a low-flow hydro-electric generation plant at Causey Reservoir to take advantage of winter releases. This will likely be accomplished through a supplemental O&M contract.

16. *Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado:* Ute Mountain Ute Tribe has requested a water delivery contract for 16,525 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

17. *Navajo-Gallup Water Supply Project, New Mexico:* Reclamation continues negotiations on an OM&R transfer contract with the Navajo Tribal Utility Authority pursuant to Public Law 111–11, Section 10602(f) which transfers responsibilities to carry out the OM&R of transferred works of the Project; ensures the continuation of the intended benefits of the Project; distribution of water; and sets forth the allocation and payment of annual OM&R costs of the Project.

18. *Animas-La Plata Project, Colorado-New Mexico:* (a) Navajo Nation title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land outside the corporate boundaries of the City of Farmington, New Mexico; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11); (b) City of Farmington, New Mexico, title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land inside the corporate boundaries of the City of Farmington; New Mexico, contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11); and (c) Operations agreement among the

United States, Navajo Nation, and City of Farmington for the Navajo Nation Municipal Pipeline pursuant to Pub. L.111–11, Section 10605(b)(1) that sets forth any terms and conditions that secures an operations protocol for the M&I water supply.

19. *Strawberry High Line Canal Company, Strawberry Valley Project; Utah:* The Strawberry High Line Canal Company has requested conversion of up to 20,000 acre-feet of irrigation water to be allowed for miscellaneous uses.

20. *Ogden River Water Users Association, Ogden River Project, Utah:* The Ogden River Water Users Association is requesting to convert 44,175 acre-feet of irrigation water from Pine View Reservoir to be available for M&I purposes.

21. *City of Page, Arizona; Glen Canyon Unit, CRSP; Arizona:* Request for a long-term contract for 975 acre-feet of water for municipal purposes.

22. *Moon Lake Water Users Association, Uintah Basin Replacement Project, Central Utah Project, Utah:* The Association has requested to initiate process for title transfer of the Uintah Basin Replacement Project to the Association under the authority of Public Law 116–9.

23. *Bostwick Park Water Conservancy District, Bostwick Park Project, Colorado:* Preliminary lease and funding agreement for development of the lease of power privilege for hydropower development on the Silver Jack Dam Bypass Pipeline. The purpose of this agreement is to receive funding from the district for Reclamation's assistance in the development of the lease of power privilege and identify timelines for the process.

24. *Emery Water Conservancy District, Emery Project, Utah:* The District has requested to initiate the process for the title transfer of the Emery Project to the District under the authority of Public Law 116–9.

25. *Sanpete Water Conservancy District, Gooseberry Project, Utah:* The District has requested Reclamation convey back its reversionary interest in a 1975 Water Right Assignment Contract with the District.

26. *Ft. Sumner ID, Carlsbad Project, New Mexico:* Reclamation is seeking a contract to lease water from the District for the forbearance of exercising their priority water rights on the Pecos River. The contract proposal is for a term of 10 years and up to 3,500 acre-feet per year of forborne water to benefit endangered species and the Carlsbad Project.

27. *Pecos Valley Artesian Conservancy District, Carlsbad Project, New Mexico:* Reclamation is seeking a contract to lease water from the District for the forbearance of surface water diversions from the Pecos River and the Hagerman Canal. This contract has a term of 10 years and up to 1,158 acre-feet of forborne water per year to benefit endangered species and the Carlsbad Project.

28. *The Jicarilla Nation, San Juan-Chama Project, New Mexico:* Reclamation is seeking a multi-year contract to lease water with the Nation to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and the endangered silvery minnow. This contract has a 5-year term for up to 5,900 acre-feet of Project water per year.

29. *Mancos Water Conservancy District, Mancos Project, Mancos, Colorado:* Pursuant to Public Law 106–549 (114 Stat. 2743), the Secretary is authorized to contract with the District for the use of project facilities for the impounding, storage, diversion, and carriage of non-project water for the purpose of irrigation, domestic, M&I, and any other beneficial purposes. Contract No. 19–WC–40–750, among the District, Reclamation, and the Miles Trust, for carriage of 0.25 cfs is pending execution following approval of NEPA documentation.

Discontinued contract actions:

1. *(10) Salt River Project Agricultural Improvement and Power District, Salt River Project; Glen Canyon Unit, CRSP; Arizona:* The District has requested an extension of its existing contract from 2034 through 2044. This action is awaiting further development by the District.

2. *(18) Mancos Water Conservancy District, Mancos Project, Colorado:* Proposed preliminary lease and funding agreement for preliminary work associated with potential lease of power privilege.

3. *(19) Mancos Water Conservancy District, Mancos Project, Colorado:* Proposed funding agreement for preliminary work associated with the evaluation of title transfer.

Completed contract action:

1. *(17) Central Utah Water Conservancy District; Bonneville Unit, CUP; Utah:* The District has received a request to convert 300 acre-feet of irrigation water in Wasatch County to M&I purposes. This will require an amended block notice. Contract was executed on January 23, 2019.

Missouri Basin—Interior Region 5: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

1. *Irrigation, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming:* Water service contracts for the sale, conveyance, storage, and exchange of surplus project water and non-project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year, or up to 1,000 acre-feet of water annually for a term of up to 40 years.

2. *Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming:* Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

3. *Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado:* Water service contracts for irrigation and M&I; contracts for the sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

4. *Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota:* Intent to modify long-term water service contract to add additional irrigated acres.

5. *Fryingpan-Arkansas Project, Colorado:* Consideration of excess capacity contracting in the Fryingpan-Arkansas Project.

6. *Colorado-Big Thompson Project, Colorado:* Consideration of excess capacity contracting in the Colorado-Big Thompson Project.

7. *Milk River Project, Montana:* Proposed amendments to contracts to reflect current landownership.

8. *Fresno Dam, Milk River Project, Montana:* Consideration of contract(s) for repayment of SOD costs.

9. *City of Casper; Kendrick Project, Wyoming:* Consideration for renewal of long-term water service contract No. 2–07–70–W0534.

10. *Lucerne Water and Sewer District, P–SMBP, Wyoming:* Consideration for renewal of contract No. 1–07–60–WS091.

11. *Town of Shoshoni, P–SMBP, Wyoming:* Consideration for renewal of contract No. 0–07–60–WS083.

12. *Canyon Limited Liability; Boysen Unit, P–SMBP; Wyoming:* Consideration for renewal of contract No. 009E6A0035.

13. *North Dakota State Water Commission, Snake Creek Pumping Plant, North Dakota:* Consideration for a use-of-facilities contract.

14. *Lugert-Altus ID, W.C. Austin Project, Oklahoma:* Consideration for amendment to contract No. Ilr-1375.

15. *State of Kansas Department of Wildlife and Parks; Glen Elder Unit, P–SMBP; Kansas:* Intent to enter into a contract for the remaining conservation

storage in Waconda Lake for recreation and fish and wildlife purposes.

16. *Arkansas Valley Conduit, Fryingpan-Arkansas Project, Colorado:* Consideration of a repayment contract for the Arkansas Valley Conduit and signing a contract to use infrastructure owned by the Pueblo Board of Water Works.

17. *Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas:* Consideration of a potential contract(s) for use of excess capacity by individual landowner(s) for irrigation purposes.

18. *Canyon Ferry Water Users Association; Canyon Ferry Unit, P–SMBP; Montana:* Consideration for new long-term repayment contract.

19. *Mid-Dakota Rural Water System, Inc., South Dakota:* Consideration of an amendment to agreement No. 5–07–60–W0223 to reflect the payoff of loans.

20. *Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota:* Consideration of a contract for 165 cubic-feet-per-second of water for rural and M&I purposes.

21. *Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado:* Consideration for conversion of long-term water service contract No. 5–07–70–W0086.

22. *Pueblo Board of Water Works, Fryingpan-Arkansas Project, Colorado:* Consideration for renewal of contract No. 00XX6C0049.

23. *Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado:* Consideration of a repayment contract for the North Outlet Works—South Outlet Works Interconnect at Pueblo Reservoir.

24. *Dickey-Sargent ID; Garrison Diversion Unit, P–SMBP; North Dakota:* Consideration of a repayment contract for irrigation storage in Jamestown Reservoir.

25. *Kansas Bostwick ID No. 2; Bostwick Division, P–SMBP; Kansas:* Consideration of contract for repayment of SOD costs.

26. *Bostwick ID in Nebraska; Bostwick Division, P–SMBP; Nebraska:* Consideration of contract for repayment of SOD costs.

27. *Midvale ID; Riverton Unit, P–SMBP; Wyoming:* Consideration of a request for a new contract for the District to continue the O&M of the transferred works of the Riverton Unit.

28. *Webster ID No. 4; Solomon Division, P–SMBP; Kansas:* Consideration of a repayment contract for XM and replacement funded pursuant to Subtitle G of Public Law 111–11.

29. *Ptarmigan Partners, LLC and Christine-Elliot Armstrong Revocable Trust and Andrew W. Armstrong Revocable Trust, Shoshone Project, Cody, Wyoming:* Consideration for amendment to contract No. 019E6A0227.

30. *P–SMBP; Montana, North Dakota, South Dakota, Wyoming, Nebraska, and Kansas:* Renewal of contracts for the sale of Project Use Power to authorized entities.

31. *Fort Clark ID; Fort Clark Project, P–SMBP; North Dakota:* Consideration for new 5-year water service contract to replace expiring contract No. 159E620073.

32. *Midvale ID; Riverton Unit, P–SMBP; Wyoming:* Consideration of a new M&I water service contract.

33. *Exxon Mobile Corporation, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado:* Consideration to amend Ruedi Round I contract No. 2–07–70–W055 for additional places of use, including the Piceance Creek Basin.

Discontinued contract actions:

1. *(14) Buford-Trenton ID; Buford-Trenton Project, P–SMBP; North Dakota:* Consideration of amending the long-term irrigation power repayment contract and project-use power contract to include additional acres.

Completed contract actions:

1. *(8) Town of Estes Park, Colorado-Big Thompson Project, Colorado:* Consideration of a renewal of the contract with the Town of Estes Park. Contract was executed on November 15, 2019.

2. *(30) Garfield County, Colorado; Ruedi Reservoir, Fryingpan-Arkansas Project; Colorado:* Consideration for amendment to contract No. 139D6C0105 for an additional place of use. Contract was executed on September 19, 2019.

Chris J. Beardsley,

Acting Director, Policy and Programs.

[FR Doc. 2020–06620 Filed 3–30–20; 8:45 am]

BILLING CODE 4332–90–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m. to 12:30 p.m., Wednesday, April 15, 2020.

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting will be open to the public. Due to COVID–19, the Udall Foundation offices are closed to the public. Members of the public who would like to attend this meeting should contact Elizabeth Monroe at *monroe@udall.gov* prior to April 15 to request the teleconference connection information.

MATTERS TO BE CONSIDERED: (1) Call to Order and Chair's Remarks; (2) Executive Director's Remarks & Update on COVID–19 Impact on Udall Foundation; (3) Deputy Executive Director's Remarks & Update on Implementation of Amended Enabling Legislation; (4) Consent Agenda Approval (Minutes of the November 21, 2019, Board of Trustees Meeting; Board Reports submitted for Education Programs; Finance and Management; John S. McCain III National Center for Environmental Conflict Resolution; Native Nations Institute for Leadership, Management, and Policy; Udall Archives; and Udall Center for Studies in Public Policy; and Board takes notice of any new and updated personnel policies and internal control methodologies); (5) Finance and Internal Controls Update (6) Native Nations Institute for Leadership, Management, and Policy: Budget Session and resolution regarding Transfer of Funds to the Native Nations Institute for Leadership, Management, and Policy; (7) Board Finding regarding Use of Funds Transferred, Allocated or Set Aside to The University of Arizona for Program Purposes; and (8) Program Issues for the Board's Consideration.

CONTACT PERSON FOR MORE INFORMATION: David P. Brown, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: March 27, 2020.

David P. Brown,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2020–06804 Filed 3–27–20; 4:15 pm]

BILLING CODE 6820–FN–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's ad hoc Committee on Elections, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: April 7, 2020 from 1:00–2:00 p.m. EDT.

PLACE: This meeting will be held by teleconference at the National Science

Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Committee Chair's welcome and remarks; presentation of nominated candidates for Board Chair and Vice Chair; discussion of nominees; review of election procedures; virtual meeting modifications/accommodations; approval of slate of candidates; and closing remarks.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Brad Gutierrez, *bgutierr@nsf.gov,* 703–292–7000. Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information. You may find meeting information and any updates (time, place, matters to be considered, or status of meeting) at *https://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2020–06771 Filed 3–27–20; 11:15 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–106 and CP2020–112; MC2020–107 and CP2020–113]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 2, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–106 and CP2020–112; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 113 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 25, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* April 2, 2020.

2. *Docket No(s).:* MC2020–107 and CP2020–113; *Filing Title:* USPS Request to Add Priority Mail Contract 598 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 25, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Christopher C. Mohr; *Comments Due:* April 2, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–06638 Filed 3–30–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information: Public Access to Peer-Reviewed Scholarly Publications, Data and Code Resulting From Federally Funded Research

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of Request for Information (RFI), extension of comment period.

SUMMARY: OSTP, and the National Science and Technology Council's (NSTC) Subcommittee on Open Science (SOS), are engaged in ongoing efforts to facilitate implementation and compliance with the 2013 memorandum *Increasing Access to the Results of Federally Funded Scientific Research* and to address recommended actions made by the Government Accountability Office in a November 2019 report. OSTP and the SOS continue to explore opportunities to increase access to unclassified published research, digital scientific data, and code supported by the U.S. Government. This RFI aims to provide all interested individuals and organizations with the opportunity to provide recommendations on approaches for ensuring broad public access to the peer-reviewed scholarly publications, data, and code that result from federally funded scientific research.

DATES: The comment period for the request for information published February 19, 2020, at 85 FR 9488, is extended. Comments will be accepted until 11:59 p.m. ET on May 6, 2020.

ADDRESSES: Comments submitted in response to this notice may be submitted online to Lisa Nichols, Assistant Director for Academic Engagement, OSTP, at *publicaccess@ostp.eop.gov.* Email submissions should be machine-readable [pdf, doc, txt] and not copy-protected. Submissions should include ''RFI Response: Public Access'' in the subject line of the message.

Instructions: Response to this RFI is voluntary. Each individual or institution is requested to submit only one response. Submission must not exceed 5 pages in 12 point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials. No business proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct your questions to Lisa Nichols at *publicaccess@ostp.eop.gov* or call Lisa Nichols at 202–456–4444.

SUPPLEMENTARY INFORMATION:

In February of 2013, OSTP issued the memorandum *Increasing Access to the Results of Federally Funded Scientific Research.* The memorandum directed Federal agencies with more than $100M in research and development (R&D) expenditures to develop plans to make the results of federally funded unclassified research that are published in peer-reviewed publications, and digitally formatted scientific data, publicly available. Federal agency plans required that published work be made available following a twelve-month post-publication embargo period.

OSTP and the NSTC SOS continue to explore opportunities to make the knowledge, information and data generated by federally funded research more readily accessible to students, clinicians, businesses, entrepreneurs, researchers, technologists, and the general public who support these investments as a means to accelerate knowledge and innovation. Over the course of the last two years, OSTP has had nearly 100 meetings with stakeholders on open science, current policy on public access to the results of federally funded research, the evolution of scholarly communications, and access to data and code associated with published results. This RFI aims to expand on these consultations and provide all interested individuals and organizations with the opportunity to provide recommendations on approaches for ensuring broad public access to the peer-reviewed scholarly publications, data and code that result from federally funded scientific research. OSTP is interested in perspectives on the following topics:

- What current limitations exist to the effective communication of research outputs (publications, data, and code) and how might communications evolve to accelerate public access while advancing the quality of scientific research? What are the barriers to and opportunities for change?
- What more can Federal agencies do to make tax-payer funded research results, including peer-reviewed author manuscripts, data, and code funded by the Federal Government, freely and publicly accessible in a way that minimizes delay, maximizes access, and enhances usability? How can the Federal Government engage with other sectors to achieve these goals?
- How would American science leadership and American competitiveness benefit from immediate access to these resources? What are potential challenges and effective approaches for overcoming them? Analyses that weigh the trade-offs of different approaches and models, especially those that provide data, will be particularly helpful.
- Any additional information that might be considered for Federal policies related to public access to peer-reviewed author manuscripts, data, and code resulting from federally supported research.

Dated: March 25, 2020.

Sean Bonyun,

Chief of Staff, Office of Science and Technology Policy.

[FR Doc. 2020–06622 Filed 3–30–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88468; File No. SR–CboeBZX–2020–028]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Expand the Trading Hours Applicable to Managed Portfolio Shares To Include all Trading Sessions

March 25, 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 March 23, 2020, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to expand the trading hours applicable to Managed Portfolio Shares to include all trading sessions instead of just Regular Trading Hours. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange received approval to add new Rule 14.11(k) for the purpose of permitting the listing and trading of Managed Portfolio Shares, which are securities issued by an actively managed open-end management investment company,[3] on December 16, 2019.[4] Rule 14.11(k)(2)(B) currently provides that transactions in Managed Portfolio Shares will occur only during Regular Trading Hours. The Exchange is proposing to change rule 14.11(k)(2)(B) in order to allow for trading in Managed Portfolio Shares during all trading sessions on the Exchange, which would include the Early Trading Session,[5] the Pre-Opening Session,[6] Regular Trading Hours, and the After Hours Trading Session.[7] The Exchange notes that Managed Portfolio Shares are currently the only product-type that is not available for trading during all trading sessions on the Exchange. As such, this proposal would allow Managed Portfolio Shares to be traded on the Exchange in a manner identical to all other products listed and/or traded on the Exchange. The Exchange proposes to implement this change immediately.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that allowing Managed Portfolio Shares to trade during all trading sessions on the Exchange will remove impediments to and perfect a national market system by reducing the complexity and potential investor confusion that could be associated with limiting the trading hours for one product type. The Exchange notes that other trading platforms will not necessarily be restricted in the hours during which they will offer trading series of Managed Portfolio Shares and believes that allowing them to trade during all trading sessions on the Exchange will eliminate confusion and complexity related to which platforms are offering trading in Managed Portfolio Shares at different times of the day. The proposed change would further reduce complexity by allowing the Exchange (and other venues) to accommodate the listing and trading series of Managed Portfolio Shares without requiring the Exchange to implement and maintain separate trading hour requirements for one product type.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change, rather, will facilitate the listing and trading of Managed Portfolio Shares in a manner that is consistent with other product types listed and traded on the Exchange as well as on other trading platforms, enhancing competition among market participants, product types, and platforms, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would allow trading of Managed Portfolio Shares on the Exchange during all trading sessions as soon as possible, making the treatment of Managed Portfolio Shares consistent with all other product types listed on the Exchange and reducing confusion and complexity associated with Managed Portfolio Shares. In addition, the Exchange states that the proposal raises no novel or unique issues in that it would allow Managed Portfolio Shares to trade in a manner identical to all other products listed and/or traded on the Exchange and consistent with the

[3] As defined in Rule 14.11(k)(3)(A), the term ''Managed Portfolio Share'' means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit (as defined in Rule 14.11(k)(3)(F)), or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N–1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit (as defined in Rule 14.11(k)(3)(G)), or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account (as defined in Rule 14.11(k)(3)(D)) for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

[4] *See* Securities Exchange Act Release No. 87759 (December 16, 2019), 84 FR 70223 (December 20, 2019) (SR–CboeBZX–2019–047).

[5] As defined in Rule 1.5(ee), the term ''Early Trading Session'' shall mean the time between 7:00 a.m. and 8:00 a.m. Eastern Time.

[6] As defined in Rule 1.5(r), the term ''Pre-Opening Session'' shall mean the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

[7] As defined in Rule 1.5(c), the term ''After Hours Trading Session'' shall mean the time between 4:00 p.m. and 8:00 p.m. Eastern Time

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

exemptive relief granted by the Commission. The Exchange further notes that it does not currently list any series of Managed Portfolio Shares, so there is no immediate impact of implementing such functionality. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[14]

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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2020–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2020–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2020–028 and should be submitted on or before April 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06613 Filed 3–30–20; 8:45 am]

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[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88474; File No. SR–NSCC–2020–003]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV

March 25, 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 March 16, 2020, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's Rules & Procedures (''Rules'') [4] in order to enhance the calculation of certain components of the Clearing Fund formula. First, the proposed rule change would clarify and enhance the methodology for identifying securities as illiquid for purposes of determining the applicable calculation of the volatility component of the Clearing Fund formula, and would revise the definition of ''Illiquid Security'' in the Rules to reflect these changes.[5] Second, the proposed rule change would enhance the calculation of the haircut-based volatility component of the Clearing Fund formula that is applied to positions in (1) Illiquid Securities (which include securities that are priced at less than a penny (''sub-penny securities'') and initial public offerings (''IPOs'')), and (2) unit investment trusts (''UITs''). Third, the proposed rule change would eliminate the existing Illiquid Charge, as the risk it was designed to address would be addressed by the other enhancements being proposed. Finally, NSCC would make certain changes to Section I.(A) of Procedure XV (Clearing Fund Formula and Other Matters) of the Rules (''Procedure XV'') [6] for greater transparency. Each of these proposed changes are described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 16, 2020, NSCC filed this proposed rule change as an advance notice (SR–NSCC–2020–802) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] *See* Rule 1 (Definitions and Descriptions). *Id.*

[6] Procedure XV, *supra* note 4.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NSCC is proposing a number of enhancements to its methodology for calculations of certain components of the Clearing Fund. First, NSCC is proposing to (1) clarify and improve the transparency and use of the term ''Illiquid Security'' for purposes of determining the applicable calculation of the volatility component of the Clearing Fund formula to Net Unsettled Positions in those securities, and (2) enhance the methodology used in this term by including additional criteria.[7] Specifically, certain criteria relating to listing national securities exchanges would continue to be utilized and would be enhanced and described with greater clarity and transparency under the proposed changes. In addition, NSCC would (i) add securities' market capitalization and a median illiquidity ratio, as described in greater detail below, as additional measurements of liquidity and (ii) remove the references to OTC Bulletin Board and OTC Link issue. NSCC would revise the definition of ''Illiquid Security'' in the Rules to reflect these enhancements.

Second, NSCC would enhance the calculation of the haircut-based volatility component of the Clearing Fund methodology for Net Unsettled Positions in securities whose volatility is less amenable to statistical analysis and securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner. Currently, NSCC uses a fixed percentage in the calculation of charges for Net Unsettled Positions in each of these securities.[8] NSCC would modify these calculations by adding two specific categories for Illiquid Securities (as newly defined pursuant to the proposed changes) and UITs. For Illiquid Securities, NSCC would apply a percentage that is based on the applicable security's price level and for both Illiquid Securities and UITs, NSCC would recalculate the applicable percentages applied to such securities at least annually. NSCC would retain the existing general categories for securities whose volatility is less amenable to statistical analysis and securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner for securities that fall within those descriptions but that are not Illiquid Securities or UITs, and would continue to apply a fixed percentage to such securities.

Third, NSCC would eliminate the existing Illiquid Charge. The Illiquid Charge was designed to cover the risk that NSCC may be unable to easily liquidate Net Unsettled Positions in Illiquid Securities in the event of a Member default due to the securities' lack of marketability and other characteristics. This risk would be addressed by the enhanced criteria for identifying Illiquid Securities, and the enhanced calculation of the applicable haircut-based volatility charge proposed by this filing. Therefore, NSCC believes the Illiquid Charge would no longer be needed to address these risks. In connection with this proposed change, NSCC would also remove the definition of ''Illiquid Position'' from the Rules, as this term is only used in connection with the calculation of the Illiquid Charge.

Finally, NSCC would provide greater detail to describe the treatment of Net Unsettled Positions in corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities in Section I.(A) of Procedure XV for greater transparency.

Each of the proposed changes is described in more detail below.

(i) Overview of the Required Fund Deposit and NSCC's Clearing Fund

As part of its market risk management strategy, NSCC manages its credit exposure to Members by determining the appropriate Required Fund Deposits to the Clearing Fund and monitoring its sufficiency, as provided for in the Rules.[9] The Required Fund Deposit serves as each Member's margin. The objective of a Member's Required Fund Deposit includes mitigation of potential losses to NSCC associated with liquidation of the Member's portfolio in the event NSCC ceases to act for that Member (hereinafter referred to as a ''default'').[10] The aggregate of all Members' Required Fund Deposits, together with certain other deposits required under the Rules, constitutes the Clearing Fund of NSCC, which it would access, among other instances, should a defaulting Member's own Required Fund Deposit be insufficient to satisfy losses to NSCC caused by the liquidation of that Member's portfolio.

Pursuant to the Rules, each Member's Required Fund Deposit amount consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC, as identified within Procedure XV.[11] Generally, the largest component of Members' Required Fund Deposits is the volatility component. The volatility component is designed to calculate the amount of money that could be lost on a portfolio over a given period of time assumed necessary to liquidate the portfolio, within a 99% confidence level.

NSCC has two methodologies for calculating the volatility component. For the majority of Net Unsettled Positions, NSCC calculates the volatility component as the greater of (1) the larger of two separate calculations that utilize a parametric Value at Risk (''VaR'') model, (2) a gap risk measure calculation based on the concentration threshold of the largest non-index position in a portfolio, and (3) a portfolio margin floor calculation based on the market values of the long and short positions in the portfolio (''VaR Charge'').[12] Pursuant to Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV, certain Net Unsettled Positions are excluded from the calculation of the VaR Charge and are instead charged a haircut-based volatility component that is calculated by multiplying the absolute value of the position by a percent determined by NSCC that is (i) not less than 10% for securities whose volatility is less amenable to statistical analysis and (ii) not less than 2% for securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner.[13] Generally, certain equity securities, including Illiquid Securities, fall within the first category as securities whose volatility is less amenable to statistical analysis and fixed-income securities, including UITs, fall within the second category as

[7] ''Net Unsettled Positions'' and ''Net Balance Order Unsettled Positions'' refer to net positions that have not yet passed their settlement date, or did not settle on their settlement date, and are referred to collectively in this filing as Net Unsettled Positions. NSCC does not take into account any offsets, such as inventory held at other clearing agencies, when determining Net Unsettled Positions for the purpose of calculating the volatility component. *See* Procedure XV, *supra* note 4.

[8] *See* Section I.(A)(1)(a)(ii) and Section I.(A)(2)(a)(ii) of Procedure XV, *supra* note 4.

[9] *See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters), *supra* note 4. NSCC's market risk management strategy is designed to comply with Rules 17Ad–22(e)(4) and (e)(6) under the Securities Exchange Act of 1934, where these risks are referred to as ''credit risks.'' 17 CFR 240.17Ad–22(e)(4) and (e)(6).

[10] The Rules identify when NSCC may cease to act for a Member and the types of actions NSCC may take. For example, NSCC may suspend a firm's membership with NSCC or prohibit or limit a Member's access to NSCC's services in the event that Member defaults on a financial or other obligation to NSCC. *See* Rule 46 (Restrictions on Access to Services) of the Rules, *supra* note 4.

[11] *See* Procedure XV, *supra* note 4.

[12] *See* Sections I.(A)(1)(a)(i) and I.(A)(2)(a)(i) of Procedure XV, *supra* note 4.

[13] Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV, *supra* note 4.

securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner.[14] The securities that fall within either one of these categories tend to exhibit unpredictable illiquid characteristics, such as low trading volumes or infrequent trading. Because the VaR Charge is a model-based calculation, which generally relies on predictability, this charge may be less reliable for measuring market risk of securities that exhibit unpredictable illiquid characteristics.[15] Therefore, NSCC believes that the haircut-based volatility charge is a more appropriate measure of volatility for Net Unsettled Positions in these securities.

In addition to charging a haircut-based volatility component rather than a VaR Charge for certain Illiquid Securities, Members' Required Fund Deposits may also include an Illiquid Charge, which is calculated as described in Sections I.(A)(1)(h) and I.(A)(2)(f) of Procedure XV.[16] The Illiquid Charge is a component of the Clearing Fund that may be assessed with respect to ''Illiquid Positions,'' which are Net Unsettled Positions in ''Illiquid Securities'' that exceed applicable volume thresholds, as described in the definition of Illiquid Position in Rule 1 of the Rules.[17] The Illiquid Charge is designed to mitigate the risk that NSCC may face when liquidating Net Unsettled Positions in these securities following a Member default.

Currently, an Illiquid Security is defined in the Rules as ''a security, other than a family-issued security as defined in Procedure XV, that either (i) is not traded on or subject to the rules of a national securities exchange registered under [the Act]; or (ii) is an OTC Bulletin Board [18] or OTC Link issue.'' [19]

NSCC regularly assesses its market and credit risks, as such risks are related to its margining methodologies, to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market.[20] The proposed changes described below are a result of NSCC's regular review of the effectiveness of its margining methodology.

(ii) Proposed Enhancements to the Definition of Illiquid Security

NSCC is proposing to revise the Rules to (1) enhance certain existing criteria used in the definition of Illiquid Security for purposes of determining the applicable calculation of the volatility component; (2) remove certain criteria that would become unnecessary following the proposed enhancements; (3) enhance the definition by introducing additional criteria; and (4) repurpose the enhanced definition of Illiquid Security to use with respect to the calculation of the volatility component, as described below. NSCC believes that the proposed changes would provide Members with improved clarity and transparency into the methodology used to apply this definition. The proposed change would also provide NSCC with additional measures of a security's liquidity to improve its ability to apply margin that reflects the risk characteristics of that security.

Following the implementation of the proposed enhancements to this definition, as described below, the definition of Illiquid Security in Rule 1 of the Rules would be a security that: (i) Is not listed on a specified securities exchange (defined below) as determined on a daily basis; (ii) is listed on a specified securities exchange and, as determined on a monthly basis, (a)(I) its market capitalization is considered a micro-capitalization (as described below) as of the last business day of the prior month or (II) it is an American depositary receipt (''ADR''); and (b) the median of its calculated illiquidity ratio (defined below) of the prior six months exceeds a threshold that would be determined by NSCC on a monthly basis and is based on the 99th percentile of the illiquidity ratio of non-micro-capitalization common stocks [21] over the prior six months; or (iii) is listed on a specified securities exchange, and, as determined on a monthly basis, has fewer than 31 business days of trading history over the past 153 business days on such exchange. As discussed above, because the VaR Charge is a model-based calculation, which generally relies on predictability, the VaR Charge may be less reliable for measuring market risk of securities that exhibit unpredictable illiquid characteristics.[22] Each of the types of securities that would be in the definition of Illiquid Security are securities that tend to exhibit unpredictable illiquid characteristics including limited trading volumes or infrequent trading.

For purposes of this definition a ''specified securities exchange'' would be a national securities exchange that has established listing services and is covered by industry pricing and data vendors.[23] Initially, NSCC would define micro-capitalization as capitalization of less than $300 million. Consistent with generally prevailing views, NSCC believes that given the lack of public information and limited trading volumes, securities with capitalization below this threshold tend to involve higher risks and exhibit illiquid characteristics.[24] NSCC may adjust this definition from time to time as appropriate in order to continue to reflect a threshold that captures securities with capitalization that would indicate that the securities exhibit illiquid characteristics. Changes to the micro-capitalization threshold would be subject to NSCC's model risk management governance procedures set forth in the Clearing Agency Model Risk Management Framework (''Model Risk Management Framework'').[25] NSCC

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[14] UITs are redeemable securities, or units, issued by investment companies that offer fixed security portfolios for a defined period of time.

[15] More specifically, the model that is used to calculate the VaR Charge relies on assumptions that are based on historic observations of a security's price. Such assumptions are not reliable predictors of price for securities that exhibit illiquid characteristics, which generally have low trading volumes or are infrequently traded.

[16] Sections I.(A)(1)(h) and I.(A)(2)(f) of Procedure XV, *supra* note 4.

[17] Rule 1, *supra* note 4.

[18] The OTC Bulletin Board is an interdealer quotation system that is used by subscribing members of the Financial Industry Regulatory Authority (''FINRA'') to reflect market making interest in eligible securities (as defined in FINRA's Rules). *See http://www.finra.org/industry/otcbb/otc-bulletin-board-otcbb.*

[19] OTC Link is an electronic inter-dealer quotation system that displays quotes from broker-dealers for many over-the-counter securities. *See https://www.otcmarkets.com.*

[20] *See* 17 CFR 240.17Ad–22(e)(6)(i), (e)(6)(vi).

[21] Securities that are exchange-traded products (''ETPs'') or ADRs would not be included when calculating the illiquidity ratio threshold. ETPs are not included when calculating the illiquidity ratio threshold because the underlying common stocks that comprise the indexes of equity ETPs are included in the calculation. ADRs are not included when calculating the illiquidity ratio threshold because the market capitalization of ADRs may be difficult to calculate because each ADR often converts to different number of shares of a local security. In addition, if NSCC is unable to retrieve data to calculate the illiquidity ratio for the median illiquidity ratio for a security on any day, NSCC would use a default value for that day for purposes of the calculation for the security (*i.e.,* the security would essentially be treated as illiquid for that day).

[22] *See supra* note 15.

[23] The exchanges that would initially be specified securities exchanges are: New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., The Nasdaq Stock Market and Cboe BZX Exchange, Inc.

[24] *See, e.g., https://www.sec.gov/reportspubs/investor-publications/investorpubsmicrocapstockhtm.html.*

[25] *See* Securities Exchange Act Release No. 81485 (August 25, 2017), 82 FR 41433 (August 31, 2017) (File No. SR–NSCC–2017–008) (describes the adoption of the Model Risk Management Framework of NSCC which sets forth the model risk management practices of NSCC) and Securities Exchange Act Release No. 84458 (October 19, 2018), 83 FR 53925 (October 25, 2018) (File No. SR–NSCC–2018–009) (amends the Model Risk Management Framework). The Model Risk Management Framework describes the model

would notify Members of changes to the micro-capitalization threshold by important notice. For purposes of the definition of Illiquid Security, the ''illiquidity ratio'' of a security on any day would be equal to (i) the price return of such security on such day (based on the natural logarithm of the ratio between the closing price of the stock on such day to the closing price of the stock on the prior trading day) divided by (ii) the average daily trading amount [26] of such security over the prior 20 business days.[27]

a. Enhancements to the Existing Criteria in the Definition of Illiquid Security

NSCC is proposing to enhance existing criteria in the definition of Illiquid Security as set forth below.

In the current definition, an Illiquid Security is a security that is ''either (i) not traded or subject to the rules of a national securities exchange registered under the Securities Exchange Act of 1934, as amended; or (ii) is an OTC Bulletin Board or OTC Link issue.'' [28] On a daily basis, NSCC receives from third party vendors data relating to securities processed through NSCC which indicates the exchanges, if any, on which each security is listed. If a security is not listed on of one of the national securities exchanges covered by the third party vendors, then, currently, NSCC would consider that security an Illiquid Security for the purpose of calculating the Illiquid Charge.[29] Based on historic performances, NSCC believes the national securities exchanges that the vendors cover for this purpose are appropriate for determining if a security exhibits characteristics of liquidity because such exchanges have established listing services and are covered by industry pricing and data vendors. NSCC believes that such exchanges tend to list securities that exhibit liquid characteristics such as having more available public information, larger trading volumes and higher capitalization. NSCC continues to believe this analysis is appropriate for identifying securities that exhibit illiquid characteristics, and would retain and enhance this criterion in the definition in the Rules by specifying that it uses the specified securities exchanges that have established listing services and that are covered by industry pricing and data vendors and providing that it would determine on a daily basis whether securities are subject to the rules of a specified securities exchange.

NSCC would use the same process for determining whether a security is an Illiquid Security based on if such security is listed on a national security exchange and would enhance the definition to reflect the process that will be used. NSCC would change ''national securities exchange registered under the Securities Exchange Act of 1934, as amended'' to ''specified securities exchange'' in the definition of Illiquid Security and add a defined term for ''specified securities exchange'', which would be a national securities exchange that has established listing services and is covered by industry pricing and data vendors.

As a further enhancement, NSCC is proposing to replace the phrase ''not traded on or subject to the rules of'' with ''not listed on'' to more accurately describe the process that NSCC and its vendors use to determine if a security is on a national securities exchange. In addition, determining whether a security is listed on an exchange is more definitive and more reliably verifiable than determining whether a security is traded on or subject to the rules of a securities exchange. NSCC is also proposing to remove references to the OTC Bulletin Board and OTC Link issues in the definition of Illiquid Security. NSCC believes that the definition as revised pursuant to this rule change would capture securities listed on the OTC Bulletin Board and OTC Link and the reference to such platforms is unnecessary.

NSCC is also proposing to remove the phrase ''other than a family issued security as defined in Procedure XV'' from the definition of Illiquid Security because family issued security is not defined in Procedure XV and, given the new proposed use of the definition of Illiquid Security together with other proposed changes, it is not necessary to exclude Family-Issued Securities from the definition. The current defined term ''Illiquid Security'' is only used in the defined term ''Illiquid Position'' and in sections relating to the Illiquid Charge which would be removed pursuant to the proposed changes as described herein. The phrase ''other than a family issued security as defined in Procedure XV'' was intended to ensure that long Net Unsettled Positions in Family-Issued Securities are excluded from the Illiquid Charge.[30] Currently, short Net Unsettled Positions in Family-Issued Securities whose volatility is less amenable to statistical analysis are subject to the haircut set forth in Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV. In addition, short Net Unsettled Positions in Family-Issued Securities that are Illiquid Positions are currently subject to the Illiquid Charge.[31] Long Net Unsettled Positions in Family Issued Securities are not subject to the haircut set forth Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV nor to the Illiquid Charge.

As described below, following the proposed rule change, the defined term Illiquid Security would be repurposed to be used in Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV which sections would apply to certain short Net Unsettled Positions in Family-Issued Securities.[32] As is the case

management practices adopted by NSCC, which have been designed to assist NSCC in identifying, measuring, monitoring, and managing the risks associated with the design, development, implementation, use, and validation of ''models'' which would include the methodology for determining the volatility component of the Clearing Fund. *Id.*

[26] The daily trading amount equals the daily trading volume multiplied by the end-of-day price.

[27] NSCC believes that the 20-business day period is sufficient to reflect recent market activity for the security.

[28] *See* Rule 1, *supra,* note 4.

[29] The exchanges that have established listing services that the vendors cover for this purpose are: New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., The Nasdaq Stock Market and Cboe BZX Exchange, Inc. Members' Clearing Fund Summary reports, available through the DTCC Risk Portal, identify securities within their portfolio by the ticker symbol and whether those securities are considered Illiquid Securities for purposes of the calculation of the Illiquid Charge. This information provides Members with insight into the basis for their margin calculations.

[30] Long Net Unsettled Positions in Family-Issued Securities are not subject to the Illiquid Charge because the risk that long Net Unsettled Positions in Family-Issued Securities raise, wrong way risk, is separately provided for by a separate charge for such securities. *See* Section I.(A)(1)(a)(iv) and Section I.(A)(2)(a)(iv), *supra* note 4. Wrong way risk is a risk that an exposure to a counterparty is highly likely to increase when the creditworthiness of that counterparty deteriorates. *See* Principles for financial market infrastructures, issued by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, pg. 47 n.65 (April 2012), *available at http://www.bis.org/publ/cpss101a.pdf.* Short Net Unsettled Positions in Family-Issued Securities do not present the same wrong way risk as long Net Unsettled Positions in Family-Issued Securities. *See* note 29 below.

[31] The defined term ''Illiquid Security'' currently excludes ''a family issued security as defined in Procedure XV'', however, family issued security is not defined in Procedure XV. The defined term Illiquid Security was added to the Rules in 2017. *See* Securities Exchange Act Release No. 80260 (March 16, 2017), 82 FR 14781 (March 22, 2017) (File No. SR–NSCC–2017–001). When the defined term was added, the section where family issued securities was defined in Procedure XV was referring to a separate charge that was applied to long Net Unsettled Positions in Family-Issued Securities and the exclusion of ''family issued security'' from the defined term Illiquid Security was intended to refer to long Net Unsettled Positions in Family-Issued Securities not short Net Unsettled Positions in Family-Issued Securities.

[32] NSCC has identified exposure to specific wrong-way risk when it acts as central counterparty to a Member with long positions in Family-Issued Securities. In the event a Member with long positions in Family-Issued Securities defaults,

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currently, only long Net Unsettled Positions in Family-Issued Securities would be excluded from the calculations in Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV which would be noted in I.(A)(1)(a)(ii) as proposed below. The proposed rule change would not change the treatment of long Net Unsettled Positions in Family-Issued Securities which would remain subject to the calculations set forth in Sections I.(A)(1)(a)(iv) and I.(A)(2)(a)(iv) of Procedure XV.

NSCC believes that each of these proposed changes would improve the definition for its new proposed purpose and improve Members' transparency into the application of the existing criteria of the Illiquid Security definition.

b. New Criteria in the Definition of Illiquid Security

NSCC is also proposing to include additional criteria in order to identify securities that exhibit illiquid characteristics and may not be captured by the existing definition as described below.

Although the criterion for this definition relating to whether a security is traded on or subject to the rules of a specified securities exchange would be determined on a daily basis, as noted above, under the proposal, NSCC would also apply new criteria, described below, on a monthly basis, to identify those securities that are subject to the rules of a specified securities exchange but may still exhibit illiquid characteristics and should be identified as Illiquid Securities. The new criteria would be based on (i) the security's market capitalization and (ii) the trading history of the security. In addition, ADRs would also be subject to additional review to determine if they should be deemed to be Illiquid Securities.

First, NSCC is proposing to revise the definition of Illiquid Security to identify securities issued by an entity with a micro-capitalization, which can be a characteristic of illiquidity. For purposes of this criterion, NSCC would calculate the product of the outstanding shares and market price on a daily basis for each issuance. Each month, NSCC would use the average of those calculations over the prior month to determine market capitalization. If the average for a particular security is below a threshold determined by NSCC from time to time, the security would be considered micro-capitalization. Initially, NSCC would define micro-capitalization as capitalization of less than $300 million. Securities with a capitalization below $300 million and which are considered micro-capitalization tend to exhibit illiquid characteristics such as limited public information and lower trading volumes. NSCC may update the micro-capitalization threshold from time to time as announced by an important notice to the Members. Changes to the threshold would be subject to NSCC's model risk governance procedures set forth in the Model Risk Management Framework.[33]

If the average market capitalization of a security is considered micro-capitalization or if the security is an ADR, then the security would be subject to an additional illiquidity ratio test described below to determine if it is an Illiquid Security. NSCC believes it is appropriate to subject a security to the illiquidity ratio test if a security is considered within the range of micro-capitalization because the capitalization of a security could be an indicator of the lack of liquidity of a security. In addition, for ADRs, the market capitalization of the ADR may be difficult to calculate because each ADR often converts to different number of shares of a local security. As a result, NSCC has decided to subject all ADRs to the illiquidity ratio test to determine if it is an Illiquid Security. As noted above,[34] ETPs and ADRs would be excluded from the pool of securities that are used to calculate the illiquidity ratio threshold. However, ETPs that are considered micro-capitalization and ADRs would be subject to the illiquidity ratio test to determine if they are Illiquid Securities.

If a security is considered within the range of micro-capitalization or if the security is an ADR, it would be subject to additional illiquidity ratio test that would include the application of an ''illiquidity ratio'' to determine if the security should be deemed an Illiquid Security. The illiquidity ratio of a security on any day would be equal to (i) the security's price return on such day (based on the natural logarithm of the ratio between the closing price of the stock on such day to the closing price of the stock on the prior trading day) divided by (ii) the average daily trading amount[35] of such security over the prior 20 business days.[36] The illiquidity ratio for each security that is subject to this illiquidity ratio test would be determined monthly.

A security that is subject to the illiquidity ratio test would only be deemed an Illiquid Security if the calculated median illiquidity ratio of the prior six months exceeds a threshold to be determined by NSCC on a monthly basis based on the 99th percentile of the illiquidity ratio of non-micro-capitalization common stocks over the prior six months.[37] If the calculated median illiquidity ratio of a security did not exceed such threshold it would not be deemed an Illiquid Security and would be subject to the VaR Charge. NSCC believes the illiquidity ratio would provide it with a reliable measurement of a security's liquidity because NSCC would use the absolute value of the daily return-to-volume ratio to capture price impact. Given the same dollar amount of trading activity, higher price impact typically indicates less liquidity.

Second, NSCC would include in the Illiquid Security definition securities that are subject to the rules of a specified securities exchange, but, as determined on a monthly basis, have fewer than 31 business days of trading history over the past 153 business days on such exchange. NSCC has historically used this time period to identify IPOs which tend to exhibit illiquid characteristics due to their limited trading history.[38]

In order to implement these proposed changes, NSCC would include these additional criteria in the revised definition of ''Illiquid Security'' in Rule 1 of the Rules.

NSCC would close out those positions following a likely drop in the creditworthiness of the issuer, possibly resulting in a loss to NSCC from a resulting drop in price in the securities. As such, NSCC provides a specific charge for such securities. *See id.* Short positions present a different risk profile than long positions in this close out scenario based on, in part, the difference in the potential responsiveness of price change to quantity that may occur when NSCC is liquidating a long position in an Illiquid Security, compared to when it is liquidating a short position. As a result, the charge for Family-Issued Securities is only applied to long positions in such securities.

[33] *See supra* note 25.

[34] *See supra* note 21.

[35] *Supra* note 26.

[36] For example, assuming Stock A has a closing price of $10 on day 1, and a closing price of $11 on day 2, then the ''price return'' as of day 2 would be abs(log(11/10)) = 0.09531018. Assuming the average daily trading amount of the stock over the prior 20 business days is $1,100,000, the daily ''illiquidity ratio'' for Stock A on day 2 is 0.09531018 divided by 1,100,000 × 10^6 = 0.0866.

[37] *See supra* note 21.

[38] NSCC has observed that the use of the metric, 31 business days of trading over the past 153 business days, has been useful in identifying securities, such as IPOs, that exhibit illiquid characteristics based on their limited trading history. As such, NSCC would use this metric in the definition of Illiquid Security to ensure that these securities, including IPOs, are identified as Illiquid Securities.

(iii) Proposed Enhancement to the Volatility Component Applicable to Illiquid Securities and UITs

NSCC is also proposing to enhance the calculation of the haircut-based volatility component for Illiquid Securities and UITs. As described above, Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV currently provide that NSCC has the discretion to exclude from the VaR Charge Net Unsettled Positions in classes of securities whose volatility is (1) less amenable to statistical analysis, or (2) amenable to generally accepted statistical analysis only in a complex manner, and permits NSCC to instead calculate the volatility charge for Net Unsettled Positions in these securities as a haircut-based charge.[39]

Pursuant to this authority, NSCC calculates the volatility charge for IPOs by multiplying the absolute value of the Net Unsettled Position by a fixed 15%, and calculates the volatility charge for all other Illiquid Securities (as currently defined) and sub-penny securities by multiplying the absolute value[40] of the Net Unsettled Position by a fixed 20%. Net Unsettled Positions in UITs are subject to the same haircut-based volatility charge as other securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner. Today, NSCC generally does not adjust the applicable haircut-based volatility charge, which is a percent that is no less than 2%, pursuant to Procedure XV.

Based on backtesting results, NSCC has observed that market price movements are correlated to a security's market price. Therefore, NSCC believes it would be able to calculate a haircut-based volatility charge that more appropriately addresses the risks presented by a Net Unsettled Position if NSCC considers a security's price level or risk profile when determining the haircut percentage to be used in that calculation. As described below, NSCC is proposing to enhance the calculation of the haircut-based volatility component for Illiquid Securities and UITs. In order to implement the changes described below, NSCC would revise Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV by including new subsections (A)(I) and (II) and (B)(I) and (II) relating to such securities.

a. Enhancing the Volatility Charge for Illiquid Securities

First, NSCC is proposing to enhance the haircut-based volatility charge for Illiquid Securities. The applicable percent would be determined at least annually[41] as the highest of (1) 10%, (2) a percent benchmarked to be sufficient to cover 99.5th percentile of the historical 3-day return of each group of Illiquid Securities[42] in each Member's portfolio and (3) a percent benchmarked to be sufficient to cover 99th percentile of the historical 3-day return of each group in each Member's portfolio after incorporating a fixed transaction cost.[43] The applicable percent, and the determination of how often the applicable percent is determined if more often than annually, would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework.[44] The look-back period for this calibration would be no less than five years and would initially be five years to be consistent with the historical data set used in model development. The look-back period may be adjusted by NSCC as necessary consistent with the model risk management practices adopted by NSCC to respond to, for example, market events that impact liquidity in the market and Member backtesting deficiencies. Adjustments to the look-back period would be subject to NSCC's model risk governance procedures set forth in the Model Risk Management Framework.[45] Generally, lower priced securities that may present NSCC with a greater risk would be charged a haircut-based volatility charge based on a higher percent.

NSCC would group Illiquid Securities by price level, and Illiquid Securities that are sub-penny securities would be separately grouped by long or short position, where each group is assigned a percent to be used in the calculation of the haircut-based volatility charge. The price level groupings would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework.[46] The proposal would allow NSCC to calculate this charge based on the market price of Illiquid Securities. With respect to an Illiquid Security that is not a sub-penny security, NSCC would calculate one haircut-based volatility charge for short and long positions. However, with respect to an Illiquid Security that is a sub-penny security, NSCC would calculate the haircut-based volatility charge for short positions and long positions separately. NSCC believes the proposed change is appropriate for Illiquid Securities that are sub-penny securities, particularly as short positions in sub-penny securities could experience price movements of more than 100%. Further, these securities are typically issued by companies with low market capitalization, and may be susceptible to market manipulation, enforcement actions, or private litigation. The proposed change would allow NSCC to calculate a haircut-based volatility charge that accounts for this risk of price movements. Although sub-penny securities would be separately grouped by price level based on the sub-penny values, since the price of sub-penny securities is rounded up to one cent when it is entered into the Continuous Net Settlement System and Balance Order Accounting Operation, the current market price of each sub-penny security would be deemed to be one cent for purposes of applying the haircut-based volatility charge.

By setting a floor of 10%, the proposal would allow NSCC to charge an amount that has been adequate, based on historical observation, to address risks presented by Net Unsettled Positions in these securities and is consistent with the current methodology, which also sets a floor for the haircut-based volatility charge of no less than 10%. In this way, the haircut-based volatility charge would be calculated to allow NSCC to collect margin at levels that reflect the risk presented by these Net Unsettled Positions. Unlike the current methodology which provides NSCC the discretion to apply a haircut, NSCC would not have discretion as to whether to apply the haircut-based volatility charge to Illiquid Securities and all Illiquid Securities would be subject to the charge.

In order to implement this proposed change, NSCC would describe the haircut-based volatility charge applicable to Illiquid Securities in the

[39] *See* Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV, *supra* note 4.

[40] For purposes of the calculating the absolute value, the share price of each sub-penny security is rounded up to one cent. If a transaction in any security with a share price below one cent is entered into NSCC's Continuous Net Settlement system or Balance Order Accounting Operation, NSCC rounds up the price of the security to one cent.

[41] A number of important considerations consistent with the model risk management practices adopted by NSCC could prompt more frequent haircut review, such as material deterioration of Members' backtesting performance, market events or structure changes, and model validation findings. *See also* Model Risk Management Framework, *supra* note 25.

[42] NSCC would group Illiquid Securities by price level, and Illiquid Securities that are sub-penny securities would be separately grouped by long or short position, as discussed in more detail below.

[43] The fixed transaction cost would be equal to one-half of the estimated bid-ask spread and would be included in the simulated liquidation gain/loss of the positions in each Member's portfolio.

[44] *See supra* note 25.

[45] *See supra* note 25.

[46] *See supra* note 25.

new Sections I.(A)(1)(a)(ii)(B)(I) and I.(A)(2)(a)(ii)(B)(I) of Procedure XV.

b. Enhancing the Volatility Charge for UITs

NSCC is also proposing to revise the calculation of the haircut-based volatility charge applied to UITs by reviewing the percent used in this calculation at least annually, in order to apply a haircut-based volatility charge to Net Unsettled Positions in UITs that is more closely based on a measurement of the risk presented by Members' portfolio composition and market conditions.

Currently, NSCC applies a haircut-based volatility charge that is a fixed 2% to Net Unsettled Positions in securities whose volatility is amenable to generally accepted statistical analysis (for example, the methodology used to calculate the VaR Charge) only in a complex manner, which include UITs. NSCC is proposing to continue to apply a haircut-based volatility charge to Net Unsettled Positions in UITs that would be no less than 2%, as currently provided for in Procedure XV, but would re-calculate the applicable percent designated by NSCC at least annually. The re-calculation of the applicable percent would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework.[47] Subject to this existing floor, the applicable percent would be benchmarked to be sufficient to cover 99.5th percentile of the historical 3-day return of UITs in each Member's portfolio, with a lookback period of no less than five years. Unlike the current methodology which provides NSCC the discretion to apply a haircut, NSCC would not have discretion as to whether to apply the haircut-based volatility charge to UITs and all UITs would be subject to the charge.

In order to implement this proposed change, NSCC would describe the haircut-based volatility charge applicable to UITs in the new Sections I.(A)(1)(a)(ii)(B)(II) and I.(A)(2)(a)(ii)(B)(II) of Procedure XV.

c. Enhancing Existing Language for Volatility Charge

NSCC is also proposing to re-arrange the existing language relating to securities whose volatility is (1) less amenable to statistical analysis, or (2) amenable to generally accepted statistical analysis only in a complex manner, to clarify the language and make it more transparent. NSCC would move the description of securities whose volatility is less amenable to statistical analysis to new Sections I.(A)(1)(a)(ii)(A)(I) and I.(A)(2)(a)(ii)(A)(I) of Procedure XV and move the description of securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner to new Sections I.(A)(1)(a)(ii)(A)(II) and I.(A)(2)(a)(ii)(A)(II). NSCC would indicate that securities that are Illiquid Securities or UITs would not be subject to these general categories. NSCC would also remove the phrase ''such as OTC Bulletin Board or Pink Sheet issues or issues trading below a designated dollar threshold (*e.g.,* five dollars)'' which was intended as an example of securities whose volatility is less amenable to statistical analysis because NSCC does not believe that the example adequately describes all of the securities that are less amenable to statistical analysis and may be misleading. In addition, securities in the example would include securities that are Illiquid Securities and that would no longer be subject to this general category. In addition, NSCC is proposing to remove the phrase ''other than corporate and municipal bonds,'' which qualifies securities amenable to generally accepted statistical analysis only in a complex manner, because the treatment of corporate and municipal bonds would be clarified as set forth in subsection (v) below.

NSCC believes that the new defined term Illiquid Security would identify all securities for which a haircut is currently applied because such securities are less amenable to statistical analysis pursuant to Sections I.(A)(1)(a)(ii)(x) and I.(A)(2)(a)(ii)(x) of Procedure XV.[48] The haircut for Illiquid Securities upon implementation of the rule change would be calculated pursuant to the new category for Illiquid Securities under Sections I.(A)(1)(a)(ii)(B)(I) and I.(A)(2)(a)(ii)(B)(I) of Procedure XV rather than Sections I.(A)(1)(a)(ii)(A)(I) and I.(A)(2)(a)(ii)(A)(I) of Procedure XV. NSCC believes that UITs are currently substantially all of the securities for which a haircut is currently applied because such securities are amenable to generally accepted statistical analysis only in a complex manner pursuant to Sections I.(A)(1)(a)(ii)(y) and I.(A)(2)(a)(ii)(y) of Procedure XV.[49] The haircut for UITs upon implementation of the rule change would be calculated pursuant to the new category for UITs under Sections I.(A)(1)(a)(ii)(B)(II) and I.(A)(2)(a)(ii)(B)(II) of Procedure XV rather than Sections I.(A)(1)(a)(ii)(A)(II) and I.(A)(2)(a)(ii)(A)(II) of Procedure XV.

There are some types of securities that are amenable to generally accepted statistical analysis only in a complex manner that would not constitute UITs and for which a haircut would continue to be calculated using the category for securities that are amenable to generally accepted statistical analysis only in a complex manner upon implementation of the rule change. NSCC believes that there are no current types of securities for which the haircut would be calculated using the general category for securities that are less amenable to statistical analysis upon implementation of the rule change. NSCC, however, may deem it necessary to calculate a haircut for securities that fall within this existing category, if such securities do not fall within the categories for Illiquid Securities, after assessing margin suitability or future asset class reviews. Therefore, NSCC is proposing to keep these two more general categories in the Rules revised as contemplated above. As with these existing general categories currently, NSCC would have the discretion to determine whether a security fits within one of these categories. NSCC would follow its existing risk management practices and procedures when determining whether to apply a security that is not an Illiquid Security or a UIT to one of these categories. Applying a new security to one of these categories would be subject to NSCC's model risk management governance procedures set forth in the Model Risk Management Framework.[50]

(iv) Proposal To Eliminate the Illiquid Charge

NSCC is proposing to eliminate the existing Illiquid Charge in conjunction with the aforementioned enhancements. The Illiquid Charge is currently imposed on Net Unsettled Positions in Illiquid Securities, in addition to other applicable components of the Clearing Fund. Because the current haircut-based volatility charge is a flat charge, calculated as a percentage of the

[47] *See supra* note 25.

[48] *See* Sections I.(A)(1)(a)(ii)(x) and I.(A)(2)(a)(ii)(x) of Procedure XV, *supra* note 4.

[49] *See* Sections I.(A)(1)(a)(ii)(y) and I.(A)(2)(a)(ii)(y) of Procedure XV, *supra* note 4. Note that the haircuts for municipal and corporate bonds which are also fixed-income securities that are amenable to generally accepted statistical analysis only in a complex manner are separately calculated pursuant to Sections I.(A)(1)(a)(iii) and I.(A)(2)(a)(iii) of Procedure XV. *See* Sections I.(A)(1)(a)(iii) and I.(A)(2)(a)(iii) of Procedure XV, *supra* note 4. Examples of fixed income securities that may remain subject to calculations under Sections I.(A)(1)(a)(ii)(A)(I) and I.(A)(2)(a)(ii)(A)(I) of Procedure XV would include preferred stock or other fixed income securities that are amenable to generally accepted statistical analysis only in a complex manner other than UITs or corporate or municipal bonds.

[50] *See supra* note 25.

absolute value of these Net Unsettled Positions, it may not currently address the lack of liquidity and marketability that are characteristic of Illiquid Securities. The Illiquid Charge is calculated and applied to address these additional risks. Currently, due to the existing definition of Illiquid Security, the Illiquid Charge has limited applicability, and generally only applies to a small population of securities that exhibit illiquid characteristics (*i.e.,* over-the-counter securities traded off-exchange).[51]

However, NSCC believes the proposed enhancements would address the risks presented by Net Unsettled Positions in Illiquid Securities more adequately. As described above, the enhanced methodology for identifying Illiquid Securities would enable NSCC to identify additional securities that could pose credit exposure to NSCC. Further, NSCC believes that the proposed methodology for calculating the applicable haircut-based volatility charge would be more responsive to the risks presented by Net Unsettled Positions in those securities because it would be based on historical performance and would be recalibrated more frequently. Therefore, NSCC is proposing to eliminate the Illiquid Charge in connection with these proposed rule changes as it would be no longer needed to address the risks presented by Illiquid Securities.

In connection with this change, NSCC would also remove the definition of ''Illiquid Position'' from Rule 1 of the Rules, as this term is only used in connection with the Illiquid Charge.

In order to implement this proposed change, NSCC would amend Rule 1 of the Rules by removing the definition of ''Illiquid Position,'' and NSCC would amend Procedure XV by removing references to the Illiquid Charge in subsection (g) of Section I.(A)(1) and subsection (e) of Section I.(A)(2) and removing subsection (h) of Section I.(A)(1) and subsection (f) of Section I.(A)(2) where the Illiquid Charge is currently described.

(v) Proposal To Enhance Language in Section I.(A) of Procedure XV

In addition to the enhancements described above, NSCC is proposing to make the following changes to Section I.(A) of Procedure XV: (x) Add language in subsections (1)(a)(ii) and (iii), and (2)(a)(ii) and (iii), that indicates that Net Unsettled Positions in corporate and municipal bonds are excluded from calculations in subsections (1)(a)(i) and (ii), and (2)(a)(i) and (ii), respectively; and (y) add language in subsections (1)(a)(ii) and (iv), and 2(a)(ii) and (iv), that indicates that long Net Unsettled Positions in Family-Issued Securities are excluded from calculations in subsections (1)(a)(i) and (ii), and (2)(a)(i) and (ii), respectively. The current language indicates that corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities are excluded from calculations in subsections (1)(a)(i) and (2)(a)(i) but does not explicitly indicate that corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities are excluded from (1)(a)(ii) and (2)(a)(ii). NSCC currently applies a haircut for corporate and municipal bonds pursuant to (1)(a)(iii) and (2)(a)(iii) and long Net Unsettled Positions in Family-Issued Securities pursuant to subsections (1)(a)(iii) and (2)(a)(iii) and does not apply a haircut for those securities pursuant to subsections (1)(a)(ii) or (2)(a)(ii).[52] The proposed changes are intended to improve Members' transparency into the treatment of Net Unsettled Positions in corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities in Section I.(A) of Procedure XV and would not change NSCC's methodology with respect to corporate and municipal bonds or long Net Unsettled Positions in Family-Issued Securities.

2. Statutory Basis

NSCC believes that the proposed changes described above are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, NSCC believes that the proposed changes are consistent with Section 17A(b)(3)(F) of the Act,[53] and Rules 17Ad–22(e)(4)(i), (e)(6)(i), and (e)(6)(v), each promulgated under the Act,[54] for the reasons described below.

Section 17A(b)(3)(F) of the Act[55] requires that the rules of NSCC be designed to, among other things, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. NSCC believes the proposed changes are designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible because they are designed to enable NSCC to better limit its exposure to Members in the event of a Member default, as described below.

First, NSCC is proposing to enhance the definition of Illiquid Security by (i) enhancing an existing criterion used in this definition relating to whether a security is subject to the rules of a national securities exchange by specifying that NSCC would rely on a list of specified securities exchanges that includes exchanges that have established listing services and are covered by industry pricing and data vendors, (ii) deleting references to OTC Link and OTC Bulletin Board and (iii) adding new criteria it would use to assess the risks a security may present to NSCC due to its illiquid characteristics based on the market capitalization of the issuer of the security and the trading history of the security. The enhancements to the existing criterion relating to whether a security is subject to the rules of a national securities exchange would provide that NSCC would utilize a process that identifies securities listed on national securities exchanges that have established listing services and are covered by industry pricing and data vendors and as a result that list securities that are less likely to exhibit illiquid characteristics. Therefore, NSCC, by identifying which securities are listed on these exchanges, would enhance its ability to determine securities that exhibit illiquidity characteristics. In addition, the enhancements would improve Members' understanding of the analysis by ensuring that the Members better understand the process used by NSCC for defining Illiquid Securities based on whether a security is subject to the rules of a specified securities exchange. The references to OTC Link and OTC Bulletin Board would be removed because following the enhancements made pursuant to this rule change, the definition as revised pursuant to this rule change would capture securities listed on the OTC Bulletin Board and OTC Link and the reference to such platforms would be unnecessary.

The proposed additional criteria are designed to capture additional risk presented by securities that are subject to the rules of a specified securities exchange and exhibit illiquid characteristics based on the capitalization of the issuer or the trading history. NSCC believes that the new

51 Between November 2017 and November 2018, the Illiquid Charge represented an average of approximately 1.5% of the total Clearing Fund requirement.

52 As discussed above, currently, short Net Unsettled Positions in Family-Issued Securities whose volatility is less amenable to statistical analysis are subject to the haircut set forth in Sections I.(A)(1)(a)(ii) and I.(A)(2)(a)(ii) of Procedure XV. In addition, short Net Unsettled Positions in Family-Issued Securities that are Illiquid Positions are currently subject to the Illiquid Charge.

53 15 U.S.C. 78q–1(b)(3)(F).

54 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i), and (e)(6)(v).

55 15 U.S.C. 78q–1(b)(3)(F).

criteria would enable NSCC to better limit its exposure to Members by applying a volatility component that is a more appropriate measure of volatility for Net Unsettled Positions in these securities exhibiting illiquid characteristics. Specifically, NSCC has observed that securities that are on a specified securities exchange but that have limited trading, such as IPOs, or that are considered micro-capitalization also exhibit illiquid characteristics. Finally, due to the potential difficulty in determining market capitalization accurately with respect to ADRs, NSCC would add ADRs to the definition of Illiquid Security so that they undergo the same review as if the ADRs were considered micro-capitalization. As such, NSCC believes that adding these criteria to the definition of Illiquid Security would provide a better and more accurate measure of volatility of illiquid securities.

Second, NSCC proposes enhancements to the haircut-based volatility charge for Illiquid Securities and UITs to allow NSCC to base this charge on these securities' price level and risk profile. In this way, the haircut-based volatility charge for Net Unsettled Positions in these securities would be calculated to enable NSCC to collect margin at levels that better reflect the risk presented by these Net Unsettled Positions and would help NSCC limit its exposures to Members. As an example, a recent impact study indicated that under the current methodology short positions in sub-penny securities and securities priced between one cent and one dollar exhibited the lowest average backtesting coverage percentages with 96.2% during the study period, whereas using the proposed methodology average backtesting coverage percentage for such securities would have increased to 99.5% over the study period.

Third, NSCC believes that the proposed clarifications to the language relating to securities whose volatility is (i) less amenable to statistical analysis or (2) amenable to generally accepted statistical analysis only in a complex manner would improve Members' understanding of the current analysis by ensuring that the Members better understand the process used by NSCC for these categories by adding clarity and transparency. In addition, by adding that such categories would not be used for securities that are not Illiquid Securities or UITs would allow Members to understand that Illiquid Securities and UITs would be subject to the new sections specific to those securities.

Fourth, NSCC believes that following the proposed changes, the Illiquid Charge would no longer be needed to address the credit exposures presented by Net Unsettled Positions in Illiquid Securities because such risks would be addressed by of the proposed haircut-based volatility enhancements.

Finally, NSCC believes that the proposed changes to the language in Section I.(A) of Procedure XV relating to Net Unsettled Positions in corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities would improve Members' transparency into the treatment of Net Unsettled Positions in corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities.

The Clearing Fund is composed of Members' Required Fund Deposits which include the volatility component, and is a key tool that NSCC uses to mitigate potential losses to NSCC associated with liquidating a Member's portfolio in the event of Member default. The changes relating to (a) enhancing the existing criterion for determining an Illiquid Security, (b) clarifying and enhancing the language relating to securities whose volatility is (i) less amenable to statistical analysis or (ii) amenable to generally accepted statistical analysis only in a complex manner and (c) changing the language in Section I.(A) of Procedure XV relating to Net Unsettled Positions in corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities, would enhance clarity and transparency for Members with respect to the volatility component allowing Members to have a better understanding of the Rules. Having clear and accurate Rules would help Members to better understand their rights and obligations regarding NSCC's clearance and settlement services. NSCC believes that when Members better understand their rights and obligations regarding NSCC's services, they can act in accordance with the Rules. NSCC believes that better enabling Members to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by NSCC consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act.[56]

Each of the proposed changes listed above would improve the methodology relating to the volatility component enabling NSCC to better limit its exposure to Members such that, in the event of Member default, NSCC's operations would not be disrupted and non-defaulting Members would not be exposed to losses they cannot anticipate or control. In this way, the proposed rules are designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible and therefore consistent with Section 17A(b)(3)(F) of the Act.[57]

Rule 17Ad–22(e)(4)(i) under the Act[58] requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.

As described above, NSCC believes that the proposed changes would enable it to better identify, measure, monitor, and, through the collection of Members' Required Fund Deposits, manage its credit exposures to Members by maintaining sufficient resources to cover those credit exposures fully with a high degree of confidence. More specifically, the proposed changes to the methodology for identifying Illiquid Securities would allow NSCC to better identify securities that may present credit exposures, for purposes of applying an appropriate margin charge. The proposed enhancements to the volatility charge applicable to Illiquid Securities and UITs would provide NSCC with a more effective measure of the risks that may be presented to NSCC by positions in the securities. Specifically, the proposal to base the calculation of the haircut-based volatility charge applied to positions in Illiquid Securities and UITs on those securities' price level and risk profile would enable NSCC to manage its credit exposures by allowing NSCC to collect and maintain sufficient resources to cover those credit exposures fully with a high degree of confidence. As an example, a recent impact study indicated that under the current methodology short positions in sub-penny securities and securities priced between one cent and one dollar exhibited the lowest average backtesting coverage percentages with 96.2% during the study period, whereas using the proposed methodology average backtesting coverage percentage for such securities would have increased to 99.5% over the study period. NSCC also believes that with the proposed changes NSCC could remove the Illiquid Charge

[56] *Id.*

[57] *Id.*

[58] 17 CFR 240.17Ad–22(e)(4)(i).

from the Clearing Fund formula because the proposed changes would provide NSCC with a more effective measure of risks related to Net Unsettled Positions in Illiquid Securities. As such, the proposed enhancements to the calculation of the volatility component would permit NSCC to more effectively identify, measure, monitor and manage its exposures to risk, and would enable it to better limit its exposure to potential losses from Member default.

Therefore, NSCC believes that the proposal would enhance NSCC's ability to effectively identify, measure and monitor its credit exposures and would enhance its ability to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. As such, NSCC believes the proposed changes are consistent with Rule 17Ad–22(e)(4)(i) under the Act.[59]

Rule 17Ad–22(e)(6)(i) under the Act[60] requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.

The Required Fund Deposits are made up of risk-based components (as margin) that are calculated and assessed daily to limit NSCC's credit exposures to Members. NSCC is proposing changes that are designed to more effectively address risk characteristics of Net Unsettled Positions in Illiquid Securities. NSCC believes that these changes would enable NSCC to produce margin levels that are more commensurate with the particular risk attributes of these securities, including the risk of increased transaction and market costs to NSCC to liquidate or hedge due to lack of liquidity or marketability of such positions.

For example, by enhancing the methodology for Illiquid Securities through an additional review of market capitalization of a security and the use of an illiquidity ratio, NSCC believes that the proposed change would allow NSCC to better identify those securities that may exhibit illiquid characteristics. The proposed changes to the haircut-based methodology to base the calculation on the price level and risk profile of the applicable security, rather than a static percent, would, NSCC believes, enable NSCC to more effectively measure the risks that are particular to Illiquid Securities and UITs. Backtesting results indicate that by calculating a haircut-based volatility charge that addresses the risks presented by a security's price level or risk profile, the proposed methodology would result in a volatility charge that more appropriately addresses the risk of these securities.

These proposed changes are designed to assist NSCC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of portfolios that exhibit illiquid risk attributes. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad–22(e)(6)(i) under the Act.[61]

Rule 17Ad–22(e)(6)(v) under the Act[62] requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. NSCC is proposing to eliminate the Illiquid Charge because, NSCC believes, the other proposed changes would provide NSCC with a more effective measure of the risks presented by Illiquid Securities. Eliminating this charge would enable NSCC to remove what would become, with the implementation of the other proposed changes, an unnecessary component from the Clearing Fund calculation, and would help NSCC to rely on a more appropriate method of measuring its exposures to this risk. Therefore, NSCC believes the proposed change is consistent with Rule 17Ad-22(e)(6)(v) under the Act.[63]

(B) Clearing Agency's Statement on Burden on Competition

NSCC believes that the proposed changes to enhance its risk management of Illiquid Securities could have an impact on competition. Specifically, NSCC believes that the proposed changes could burden competition because they would result in larger Required Fund Deposit amounts for Members when the enhancements result in a haircut-based volatility component that is greater than the amount calculated pursuant to the current methodology. Impact studies indicate that the proposed changes would have resulted in an approximate 2.6% increase on average of NSCC's daily Clearing Fund had the proposed changes been in place over the period from November 2017 to October 2018.

When the proposal results in a larger volatility component, the proposed changes could burden competition for Members that have lower operating margins or higher costs of capital compared to other Members. Impact studies indicate that Members with higher percentages of Illiquid Securities in their portfolio, particularly penny or sub-penny securities, are more likely to be impacted by the proposed changes. However, the increase in Required Fund Deposit would be in direct relation to the specific risks presented by each Members' Net Unsettled Positions, and each Member's Required Fund Deposit would continue to be calculated with the same parameters and at the same confidence level for each Member. Therefore, Members that present similar Net Unsettled Positions, regardless of the type of Member, would have similar impacts on their Required Fund Deposit amounts. As such, NSCC does not believe that any burden on competition imposed by the proposed changes would be significant.

Further, NSCC believes that any burden on competition imposed by the proposed change would be both necessary and appropriate in furtherance of NSCC's efforts to mitigate risks and meet the requirements of the Act, as described in this filing and further below.

NSCC believes that the above described burden on competition that may be created by the proposed changes to margining Illiquid Securities and UITs would be necessary in furtherance of the Act, specifically Section 17A(b)(3)(F) of the Act,[64] because, as described above, the Rules must be designed to assure the safeguarding of securities and funds that are in NSCC's custody or control or which it is responsible.

More specifically, NSCC believes these proposed changes are necessary to support NSCC's compliance with Rules 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) and (v) under the Act,[65] which require NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to (x) effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to

[59] *Id.*

[60] 17 CFR 240.17Ad–22(e)(6)(i).

[61] *Id.*

[62] 17 CFR 240.17Ad–22(e)(6)(v).

[63] *Id.*

[64] 15 U.S.C. 78q–1(b)(3)(F).

[65] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i), (e)(6)(v).

each participant fully with a high degree of confidence; (y) cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; and (z) cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.

As described above, NSCC believes implementing the proposed enhancements to its methodology for identifying Illiquid Securities and the calculation of the applicable volatility charge would improve the risk-based methodology that NSCC employs to measure risks related to securities that exhibit illiquid characteristics. The proposed change would introduce additional criteria for defining Illiquid Securities to improve NSCC's methodology for identifying securities that exhibit illiquid characteristics. The proposed change would also enhance the calculation of the applicable volatility component to address the unique risks presented by Members' Net Unsettled Positions in these securities, regardless of Member type, as described above. Therefore, NSCC believes that these proposed changes would better limit NSCC's credit exposures to Members, consistent with the requirements of Rules 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) and (v) under the Act.

NSCC also believes that the above described burden on competition that could be created by the proposed changes would be appropriate in furtherance of the Act because such changes have been appropriately designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, as described in detail above. The proposal would enable NSCC to produce margin levels more commensurate with the risks and particular attributes of each Member's portfolio. Specifically, the proposal to enhance the methodology for identifying Illiquid Securities and the calculation of the haircut-based volatility component applicable to these securities and UITs would improve the risk-based margining methodology that NSCC employs to set margin requirements and better limit NSCC's credit exposures to its Members. Impact studies indicate that the proposed methodology, by calculating a haircut-based volatility charge that addresses the risks presented by a security's price level or risk profile, would result in backtesting coverage that more appropriately addresses the risk of these securities. Therefore, because the proposed changes are designed to provide NSCC with a more appropriate and complete measure of the risks presented by Members' Net Unsettled Positions, NSCC believes the proposals are appropriately designed to meet its risk management goals and its regulatory obligations.

Therefore, as described above, NSCC believes the proposed changes are necessary and appropriate in furtherance of NSCC's obligations under the Act, specifically Section 17A(b)(3)(F) of the Act [66] and Rules 17Ad–22(e)(4)(i) and Rule 17Ad–22(e)(6)(i) and (e)(6)(v) under the Act.[67]

Because the proposal to eliminate the Illiquid Charge would remove this charge from the margining methodology as applied to all Members, when applicable, NSCC does not believe the proposed change to eliminate the Illiquid Charge would have any impact on competition. NSCC does not believe that the proposed changes in Section I.(A) of Procedure XV relating to securities whose volatility is less amenable to statistical analysis, securities whose volatility is amenable to generally accepted statistical analysis only in a complex manner, or to corporate and municipal bonds and long Net Unsettled Positions in Family-Issued Securities, would have any impact on competition as these changes would just add clarity and transparency to the Rules and not affect Member's rights and obligations.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has not received or solicited any written comments relating to this proposal. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–NSCC–2020–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2020–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal

[66] 15 U.S.C. 78q–1(b)(3)(F).

[67] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i), (e)(6)(v).

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–NSCC–2020–003 and should be submitted on or before April 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06617 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88472; File No. SR–GEMX–2020–08]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 8, Opening

March 25, 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 March 24, 2020, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX Rules at Options 3, Section 8, titled ''Opening.''

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

The Exchange proposes to amend GEMX Rules at Options 3, Section 8, titled ''Opening.'' The Exchange proposes to rename this rule ''Options Opening Process.'' Specifically, the Exchange is proposing to amend the definition of ''market for the underlying security.''

Today Options 3, Section 8(a)(2) describes ''market for the underlying security'' as ''. . . either the primary listing market or the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), as determined by the Exchange by underlying and announced to the membership on the Exchange's website.''

The Exchange proposes to amend this definition by replacing the term ''primary volume market'' with ''an alternative market designated by the primary market.'' The Exchange anticipates that an alternative market would be necessary if the primary listing market were impaired.[3] In the event that a primary market is impaired and utilizes its designated alternative market, the Exchange would utilize that market as the underlying.[4] The Exchange further proposes an additional contingency. In the event that the primary market is unable to open, and an alternative market is not designated (and/or the designated alternative market does not open), the Exchange may utilize a non-primary market to open all underlying securities from the primary market. The Exchange will select the non-primary market with the most liquidity in the aggregate for all underlying securities that trade on the primary market for the previous two calendar months, excluding the primary and alternate markets. The Exchange notes that in order to open an option series it would require an equity market's underlying quote. If another equity market displays opening prices for the underlying security, the Exchange proposes to utilize those quotes. This proposed change to the current System would allow the Exchange to open in situations where the primary market is experiencing an issue and also where an alternative market designated by the primary market may not be designated by the primary market or is unable to open. The Exchange believes that this proposal would effectively provide the Exchange with additional opportunities to open the market and provide its members with a venue in which to transact options trading. The Exchange notes that utilizing a non-primary market with the most liquidity in the aggregate for all underlying securities for the previous two calendar months will ensure that the Exchange opens with quotes which are representative of the volume on that primary market. The Exchange believes that this proposal will enable it to open in the event that there are issues with the primary market or the alternate market assigned by the primary.

The Exchange also proposes to make a corresponding amendment to Options 3, Section 8(c)(2) to replace the reference to ''primary market'' with the defined term ''market for the underlying security.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by providing for alternative processes to determine the market for the underlying. The Exchange's proposal to amend the definition of ''market for the underlying security'' within Options 3, Section 8(a)(2) is consistent with the Act.

First, the Exchange's proposal would remove the concept of a primary volume market and replace that concept with an alternative market designated by the primary market. The Exchange notes that it is most likely the case that the primary market is the primary volume market, so this term offers no contingency in most cases. The primary market has the ability to designate an alternate primary market when the

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[68] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that the primary listing market and the primary volume market as defined in GEMX's Rules could be the same market and therefore an alternative market is not available under the current Rule.

[4] For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca, Inc. (''NYSE Arca'') as its alternative market, then GEMX would utilize NYSE Arca as the market for the underlying.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

primary market is experiencing difficulties. In those situations, the Exchange proposes to utilize the alternate primary market to open its market. For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca as its alternative market, then GEMX would utilize NYSE Arca as the market for the underlying security.

Second, the Exchange proposes another alternative in the event that the primary market does not open and an alternate primary market is not designated and/or is also unable to open. In this situation, the Exchange proposes to utilize a non-primary market to open its market. The Exchange will select the non-primary market with the most liquidity in the aggregate for all underlying securities from the primary market for the previous two calendar months, excluding the primary and alternate markets. For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca as its alternative market, and the alternate primary was unable to open or NYSE was unable to designate an alternate market because of system difficulties, then GEMX would determine which non-primary market had the most liquidity in the aggregate for all underlying securities for the previous two calendar months, excluding the primary and alternate markets. The Exchange would utilize that market to open all underlying securities from the primary market. The Exchange notes that in order to open an option series it would require an equity market's underlying quote. The Exchange notes that utilizing a non-primary market with the most liquidity in the aggregate for all underlying securities for the previous two calendar months will ensure that the Exchange opens based on the next best alternative to the primary market given the circumstances. This contingency will provide the Exchange with the ability to open in situations where the primary market is experiencing an issue and also where an alternative primary market may also be impacted.

The Exchange believes that this proposal would protect investors and the general public by providing additional venues for GEMX to utilize as part of its Opening Process and thereby allow investors to transact on its market. The Exchange desires to open its market despite any issues that may arise with the underlying market. The Exchange is proposing alternate methods to open its market to account for situations which may arise if the primary market is unable to open, and if the proposed alternate designated market is unable to open. The Exchange notes that once the market opens with an underlying price, the options market may continue to trade for the remainder of the trading day. The Exchange believes it benefits investors and the general public to have the options market available to enter new positions, or close open positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Amending the definition of ''market for the underlying security'' within Options 3, Section 8(a)(2) does not burden competition. The Exchange's proposal offers alternative paths to open the Exchange in the event that the primary market or even a designated alternate primary market experiences an issue. The Exchange's proposal is intended to create additional certainty that in the event of an issue with the primary market, the Exchange would have other equity markets to look to with respect to underlying prices on which to open the Exchange. This proposal also does not impact the ability of other options markets to open.

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) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may amend its rules to permit the Exchange to utilize additional venues to open its market if the primary market and any designated alternate market for the underlying security are experiencing an issue and unable to open, thereby allowing investors to transact on its market in such a situation. The Exchange believes that having its options market available to enter new positions or close open positions would benefit investors and the general public. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[11]

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–2020–08 on the subject line.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2020–08. 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–GEMX–2020–08 and should be submitted on or before April 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06608 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88467; File No. SR–DTC–2020–006]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the DTC Operational Arrangements With Respect to Notices Submitted to DTC for Posting to LENS

March 25, 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 March 18, 2020, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(1) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change[5] consists of modifications to the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (''OA'')[6] in order to make clarifying changes to DTC's Procedures[7] relating to notices posted to the Legal Notice System (''LENS''),[8] as described below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change consists of modifications to the OA in order to make clarifying changes to DTC's Procedures relating to notices posted to LENS, as described below.

Background

DTC receives notices to holders of Securities from various sources that may not be Participants, or may be Participants acting in another capacity, including those that may be issuers, transfer agents, and/or other third parties, relating to Securities on Deposit at DTC. These parties may have a legal or regulatory obligation or other interest to distribute notices containing certain information to holders relating to Securities. These parties deliver such notices to DTC because DTC is the registered holder of the applicable Securities and/or the appropriate qualified registered securities depository[9] with respect to an issue. DTC posts the notices it receives in this regard to LENS, where they are available for viewing by a Participant, who may

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] Capitalized terms not otherwise defined in this rule filing are defined as set forth in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx,* the Deposits Service Guide (''Deposits Guide''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Deposits.pdf* and the Custody Service Guide (''Custody Guide''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Custody.pdf.*

[6] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[7] Pursuant to the Rules, the term ''Procedures'' means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. *See* Rule 1, Section 1, *supra* note 5.

[8] As the registered holder of Securities Deposited at DTC and/or as appropriate qualified registered securities depository, *infra* note 5, DTC receives notices to holders of the Securities. Participants may view these notices to holders via LENS, a secure interface offered by DTC. The Commission issued an order approving LENS on June 12, 1991. *See* Securities Exchange Act Release No. 29291 (June 12, 1991), 56 FR 28190 (June 19, 1991) (File No. SR–DTC–91–08). (''LENS Approval Order''). LENS was originally accessible through the DTC Participant Terminal System (''PTS''). *Id.* DTC subsequently implemented a web-based LENS interface. *See* Securities Exchange Act Release No. 43964 (February 14, 2001), 66 FR 11190 (February 22, 2001) (SR–DTC–00–18). The LENS PTS function was retired effective August 27, 2010, and Participants may access LENS via the web-based functionality mentioned above. *See* Securities Exchange Act Release No. 62686 (August 10, 2010), 75 FR 50032 (August 16, 2010) (SR–DTC–2010–10).

[9] 17 CFR 240.17Ad–16. Pursuant to Rule 17Ad–16, an ''appropriate qualified registered securities depository'' shall mean the qualified registered securities depository that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date. 17 CFR 240.17Ad–16(f).

share the notices with investors that may hold a beneficial interest in an applicable Security on the books to the Participant.

In 2019, DTC implemented changes [10] to the text of the OA relating to receipt and posting to LENS of notices of transfer agent changes (''17Ad–16 Notice'') pursuant to Rule 17Ad–16 [11] (''Rule 17Ad–16'') of the Act.[12] Pursuant to the 17Ad–16 Notice Rule Filing, DTC added a note to the sections relating to posting of 17Ad–16 Notices and trustee notices (Section II(B)(4)(f) and Section II (B)(5), respectively) to state that (1) DTC does not screen the 17Ad–16 Notices for confidential information, and (2) it is the full and sole responsibility of the transfer agent or trustee, as applicable, submitting a 17Ad–16 Notice to ensure that the information contained in the 17Ad–16 Notice is correct and does not include any information that would otherwise be deemed as confidential or material non-public information.

Pursuant to the proposed rule change, DTC would make clarifying changes to the OA to add similar notes, where applicable, with respect to all notices received by DTC for posting to LENS, as described below. DTC would also add text to clarify and update requirements for delivery of certain notice types that DTC receives from transfer agents for posting to LENS, as described below.

Proposed Rule Change

Because DTC is not the issuer, and does not have any role with respect to the creation or content, of notices sent to it for posting to LENS, DTC believes it would be prudent to include provisions in the OA relating to confidential information for all notices submitted to DTC for posting to LENS that are like those added with respect to the transfer agent notices submitted to DTC in accordance with the OA provisions implemented pursuant to the 17Ad–16 Notice Rule Filing. In this regard, pursuant to the proposed rule change, DTC would add text to the OA, including in and new Section II.B.4.g. and existing Section VI.E.1.b. with respect to information received for posting to LENS from any party that is consistent with the text previously added to the OA pursuant to the 17Ad–16 Notice Rule Filing, as described above. DTC would also make other changes relating to LENS to the OA, including clarifying and updating delivery requirements for LENS notices, as described below.

New Section Relating to Posting of Certain Notices Sent by Transfer Agents

DTC would add a new Section II.B.4.g. to the OA to clarify delivery requirements for notices delivered to DTC from transfer agents for posting to LENS. The new section would be titled ''Other Notices Delivered by Transfer Agents for Posting to LENS'' and sequentially would follow the sections in the OA relating to requirements for the delivery and posting of 17Ab–16 Notices to LENS.

Pursuant to the OA, a copy of a 17Ab–16 Notice should be either (i) printed and signed by the transfer agent on its company letterhead and emailed in a Word document or portable document format to DTC's Transfer Agent Services area at *TAServices@dtcc.com,* or (ii) may be electronically signed and submitted using the link titled ''Notice of Assumption or Termination of Transfer Agent Services Form 17Ab–16'' available at: *http://dtcc.com/matching-settlement-and-asset-services/agent-services/dtc-eligible-agent.* The latter delivery option is dedicated solely to 17Ab–16 Notices. Therefore, DTC would add new Section 11.B.4.g. to describe that other notices, separate from 17Ab–16 Notices, may also be sent to DTC from transfer agents for DTC's posting to LENS, including, but not limited to, closing memoranda and new issue memoranda,[13] and state that such notices should be sent to *TAServices@dtcc.com.* The proposed text for this new section would also include (i) the email address (*LENSnotices@dtcc.com*) described above for inquiries regarding the status of LENS notices and (ii) a note consistent with that set forth in the section regarding posting of 17Ab–16 Notices stating that ''DTC does not screen notices it receives for posting to LENS for confidential information. It is the full and sole responsibility of the transfer agent submitting a notice to ensure that the information contained in the notice is correct and does not include any information that would otherwise be deemed as confidential or material non-public information.'' Like 17Ab–16 Notices, an address for hard copy notices would not be provided. To provide additional clarity with respect to the instructions for delivery of a LENS notice, DTC would add a sentence to the section to state that ''Hard copy notices will not be posted to LENS.''

Section VI.E.1.b. (Legal Notices)

Pursuant to the proposed rule change, to provide consistency with the text in the OA relating to 17Ab–16 Notices and reflecting the obligations of submitters of information as mentioned above, DTC would add a note to Section VI (E)(1)(b) [14] of the OA that describes the Procedure for legal notices [15] posted to LENS, to state that (1) DTC does not screen legal notices for confidential information, and (2) it is the full and sole responsibility of the issuer, transfer agent, trustee, or other party, as applicable, submitting a legal notice, to ensure that the information contained in the legal notice is correct and does not include any information that would otherwise be deemed as confidential or material non-public information.

DTC would also update this section as follows:

(i) Text would be added to state that if hardcopy delivery is used it is to be in addition to emailing the notices the section. This additional text would provide clarification consistent with the delivery requirements provided in the first paragraph of this section which states that all legal notices shall be sent by email but also provides a physical mailing address in the event the sender is required by the governing document for the applicable security to make hardcopy notification. The added text would also conform to similar included in the section that immediately precedes it (Section VI.E.1.a.) (Consent Notices) with respect to consent notices.

(ii) DTC would eliminate an email address for delivery of notices for posting to LENS such that a sender would only be required to send a notice to a single email address, rather than two as currently stated in this section. Currently, the OA states that notices should be sent by email to *LegalandTaxNotices@dtcc.com* and *mandatoryreorganizationannouncements@dtcc.com.* In accordance with this change the revised text would only include the former and the latter would be removed. DTC believes that requiring delivery to a single email address rather than two would simplify the process and add efficiencies for DTC in that only one email address would need to be monitored for receipt of the applicable notices.

[10] *See* Securities and Exchange Act Release No. 34–86113 (June 14, 2019), 84 FR 28867 (June 20, 2019) (SR–DTC–2019–001) (''17Ad–16 Notice Rule Filing'').

[11] 17 CFR 240.17Ad–16.

[12] 15 U.S.C. 78q–1.

[13] These types of notices provided to DTC for delivery to Participants and securityholders through LENS provide details relating to securities, including but not limited to details relating to new issues and related to closings of those issues.

[14] *See* OA, *supra* note 6 at 54.

[15] Legal notices posted to LENS include notices (including notices to security holders) of bankruptcies, litigation/class actions, and defaults. *See also* description of LENS, *available at http://www.dtcc.com/settlement-and-asset-services/issuer-services/legal-notice-system.*

(iii) Text would be added to provide a contact email address for inquiries regarding the status of any notice previously sent to DTC. This address would be *LensNotices@dtcc.com.* DTC believes that providing a contact email in the text of the OA in this section would provide senders of notices with an enhanced ability to communicate with DTC about the status of LENS posting requests sent by them to DTC.

Effective Date

The proposed rule change would become effective upon filing with the Commission.

2. Statutory Basis

Section 17A(b)(3)(F) [16] of the Act requires that the rules of the clearing agency be designed, *inter alia,* to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes the proposed rule change is consistent with this provision because by making a clarifying change to the text within the Procedures set forth in the OA to (i) add a note relating to responsibilities of users with respect to accuracy and confidentiality considerations relating to notices sent to DTC for posting to LENS, as described above and (ii) adding text to clarify the delivery requirements of notices to be posted to LENS, the proposed rule change would provide enhanced transparency for users with respect to the Procedures relating to submission and processing of notices that may be submitted by them, as applicable, in accordance with the section of the OA mentioned above. Therefore, by providing users with enhanced transparency with regard to the Procedures relating to the submission of notices to LENS, and therefore facilitating the prompt posting of notices and distribution of information to Participants related to Securities held by the Participants, and that may be the subject of transactions processed through the DTC system, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions consistent with the Act.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition. The proposed rule change consists of clarifying changes that would add text to the OA that clarifies DTC's policies with respect to notices received from third parties for posting to LENS for view by Participants and would make other clarifying changes and updates to delivery information for notices, as described above. Therefore, the proposed rule change would not create new rights or obligations for users of DTC's services and would not impact, or impose any burden on, competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b-4 thereunder.[18] 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.

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–DTC–2020–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2020–006. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2020–006 and should be submitted on or before April 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06611 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b4(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88475; File No. SR–CBOE–2020–018]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update the Silexx Fee Schedule

March 25, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 13, 2020, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to include language within the Silexx Fees Schedule to introduce a free upgrade for users on Silexx Basic to Silexx Pro from March 13, 2020 through April 30, 2020.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to include language within the Silexx Fees Schedule to introduce a free upgrade for users on Silexx Basic to Silexx Pro from March 13, 2020 through April 30, 2020.

By way of background, the Silexx platform consists of a ''front-end'' order entry and management trading platform (also referred to as the ''Silexx terminal'') for listed stocks and options that supports both simple and complex orders,[3] and a ''back-end'' platform which provides a connection to the infrastructure network. From the Silexx platform (*i.e.,* the collective front-end and back-end platform), a Silexx user has the capability to send option orders to U.S. options exchanges, send stock orders to U.S. stock exchanges (and other trading centers), input parameters to control the size, timing, and other variables of their trades, and also includes access to real-time options and stock market data, as well as access to certain historical data. The Silexx platform is designed so that a user may enter orders into the platform to send to an executing broker (including Trading Permit Holders (''TPHs'')) of its choice with connectivity to the platform, which broker will then send the orders to Cboe Options (if the broker is a TPH) or other U.S. exchanges (and trading centers) in accordance with the user's instructions.[4] The Silexx front-end and back-end platforms are a software application that are installed locally on a user's desktop. Silexx grants users licenses to use the platform, and a firm or individual does not need to be a TPH to license the platform. Use of Silexx is completely optional.

Free Upgrade

Silexx Basic is an order-entry and management system that provides basic functionality including real-time data, alerts, trade reports, views of exchange books, management of the customer's orders and positions, simple and complex order tickets, and basic risk features. Users are currently charged $200 per month per Login ID for Silexx Basic. Silexx Pro offers the same functionality as the basic platform plus additional features including an algorithmic order ticket, position analysis, charting, earnings and dividend information, delta hedging tools, volatility skews, and additional risk features. Users are currently charged $400 per month per Login ID for Silexx Pro.

The Exchange proposes to introduce a free-upgrade period for users that are currently on Silexx Basic. This upgrade would allow users of Silexx Basic to use the functionality of Silexx Pro from March 13, 2020 through April 30, 2020) at the current Silexx Basic rate of $200 per month per Login ID. After this period ends, beginning May 1, 2020, those users who upgraded will be charged at the Silexx Pro rate of $400 per month until they choose to downgrade. The Exchange notes that the upgrade to Silexx Pro is optional.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particularly, the Exchange believes the proposed is reasonable, equitable, and not unfairly discriminatory because the free upgrade will apply to all current users of Silexx Basic who wish to upgrade. Additionally, the free upgrade period will be limited through April 30, 2020. Finally, the Exchange notes that use of the platform, including the upgrade, is discretionary and not compulsory, and users may downgrade or cancel their Login IDs with Silexx at any time.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose any burden on intramarket competition because the proposed rule changes apply to all users of Silexx. The Exchange notes that each version of Silexx is available to all market participants, and users have discretion to determine which version of the platform they register for based on functionality.

The Exchange does not believe that the proposed rule changes will impose

[3] The platform also permits users to submit orders for commodity futures, commodity options and other non-security products to be sent to designated contract markets, futures commission merchants, introducing brokers or other applicable destinations of the users' choice.

[4] Silexx does not allow users to send orders directly to the Exchange or other market centers; however, an additional version of the Silexx platform, Silexx FLEX, supports the trading of FLEX Options and allows authorized Users with direct access to the Exchange. See Securities Exchange Act Release No. 87028 (September 19, 2019) 84 FR 50529 (September 25, 2019) (SR–CBOE–2019–061).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f) of Rule 19b–4 [9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–018 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–018. 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–CBOE–2020–018 and should be submitted on or before April 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06609 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88478]

Order Granting Application by The Financial Information Forum and Security Traders Association for a Temporary Exemption Pursuant to Rule 606(c) of Regulation NMS Under the Exchange Act in Response to the Effects of COVID–19

March 25, 2020.

I. Introduction

The Financial Information Forum (''FIF'') and Security Traders Association (''STA'') have filed with the Securities and Exchange Commission (''Commission'') an application for an exemption from certain requirements [1] of Rule 606 of Regulation NMS under the Exchange Act in light of unforeseen and uncertain demands on information technology and other resources required to respond to COVID–19.[2]

This order grants the following temporary exemptive relief from certain requirements of Rule 606, which is set forth in greater detail below: (1) Broker-dealers are exempt from the requirement to provide the public report covering the first quarter of 2020 required by Rule 606(a) until May 29, 2020; (2) broker-dealers that engage in outsourced routing activity are exempt from the requirement to collect the monthly customer-specific data required by Rule 606(b)(3) for such activity until June 1, 2020, and are exempt until July 29, 2020, from the requirement to provide a customer-specific report of June 2020 outsourced routing data within seven business days for customer requests for such customer-specific reports that are made on or before July 17, 2020.[3]

II. Background

On November 2, 2018, the Commission adopted amendments to Rule 606 of Regulation NMS under the Exchange Act.[4] Under Rule 606(a), broker-dealers must provide quarterly, aggregated public disclosure of their routing and handling of orders submitted on a held basis in NMS stock. In addition, under Rule 606(b) a broker-dealer must, upon request of its customer, provide customer-specific disclosures related to the routing and execution of the customer's NMS stock orders submitted on a not held basis for the prior six months, subject to two de minimis exceptions.

The Commission previously revised the compliance dates for Rule 606 to provide broker-dealers with additional time to implement the systems and other changes necessary to comply with Rule 606. On April 30, 2019, the Commission extended the compliance date for the amendments to Rule 606 to begin following September 30, 2019.[5]

[1] *See* letter from James Toes, President & CEO, STA, Chris Halverson, Chairman of the Board, STA, and Christopher Bok, Director, FIF, to Brett Redfearn, Director, Division of Trading and Markets (''Division''), Commission, dated March 24, 2020 (''FIF/STA Letter'').

[2] 17 CFR 242.606.

[3] Customer-specific reports of June 2020 outsourced routing data are due within seven business days of customer requests made after July 17, 2020.

[4] *See* Exchange Act Release No. 84528 (November 2, 2018), 83 FR 58338 (November 19, 2018) (''Adopting Release'').

[5] *See* Exchange Act Release No. 85714 (April 24, 2019), 84 FR 18136 (April 30, 2019) (''April 2019 Extension''). The original compliance date set forth

Continued

On September 4, 2019, the Commission, by the Division pursuant to delegated authority, granted temporary exemptions from amended Rule 606: (1) To all broker-dealers, from the requirement to collect the quarterly public data on held orders until January 1, 2020 (with the first quarterly report due by the end of April 2020); (2) to all broker-dealers that engage in self-routing activity, from the requirement to collect the customer-specific monthly data for not held orders until January 1, 2020 (with the first customer-specific report of such data due seven business days after February 15, 2020, for customer requests made on or before February 15, 2020); and (3) to all broker-dealers that engage in outsourced routing activity, from the requirement to collect the customer-specific monthly data for not held orders until April 1, 2020 (with the first customer-specific report of such data due seven business days after May 15, 2020, for customer requests made on or before May 15, 2020).[6]

FIF and STA request that the Commission: (1) Delay to May 29, 2020, the date by which broker-dealers must provide the public report of first quarter 2020 data required by Rule 606(a); and (2) extend to June 1, 2020, the date that broker-dealers that outsource routing must begin to collect the monthly customer-specific data for not held NMS stock orders required by Rule 606(b)(3), and extend to July 29, 2020, the date by which broker-dealers must provide the customer-specific report of June 2020 data for customer requests that are made on or before July 17, 2020.[7] According to FIF and STA, due to the challenges posed by COVID–19, resources at firms are currently focused on the safety of employees and supporting investors, and extensions of the near-time compliance dates for implementation of amended Rule 606 would allow broker-dealers to allocate resources towards addressing those challenges as well as issues associated with current market volatility and mitigate potential risks to firms' regulatory systems that otherwise would need to be modified and tested to satisfy near-term implementation milestones.[8]

III. Order Granting Temporary Exemptions

Rule 606(c) [9] authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. The Commission, by the Division pursuant to delegated authority,[10] is granting a temporary exemption from certain of the existing compliance dates that were set forth in the September 2020 Extension. The Commission believes that this temporary relief is necessary or appropriate in the public interest, and consistent with the protection of investors, given the unforeseen and uncertain challenges, including business continuity implementation and market volatility, posed by COVID–19 to broker-dealers that must comply with the Rule 606 requirements to provide reports of order handling and routing data.

A. Rule 606(a)

The Commission has determined that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to provide broker-dealers with a temporary exemption until May 29, 2020, from the requirement to provide the initial public report of first quarter 2020 data for held orders under Rule 606(a). Broker-dealers have been required to collect the held order data since January 1, 2020, but they are not required to generate the initial public report of that data until the end of April 2020. Pursuant to this exemption, a broker-dealer has an additional month to prepare the public report of first quarter 2020 held order data.[11]

B. Rule 606(b)(3) for Broker-Dealers Engaged in Outsourced Routing Activity

For substantially the same COVID–19-related reasons, the Commission has determined that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to provide broker-dealers that outsource routing with a temporary exemption until June 1, 2020, from the requirement to collect the monthly customer-specific data for their outsourced routing activity, and until July 29, 2020, from the requirement to provide the first customer-specific report of such data for customer requests that are made on or before July 17.[12] This first report would cover June 2020. Pursuant to this exemption, a broker-dealer has two additional months to prepare to collect the data required by Rule 606(b)(3) for outsourced routing activity and to prepare the first report relating to outsourced routing activity.[13]

The chart below depicts the current timing for reporting requirements under amended Rule 606 as set forth in the September 2019 Extension, as well as the temporary exemptions being granted herein:

Who?	What?	Current requirement	Exemption
Quarterly Public Reporting:			
All routing broker-dealers	Aggregate public report on routing *held* orders in NMS stocks and orders for options contracts of less than $50,000 *.	Data collection began Jan. 1, 2020; report covering Q1 2020 due Apr. 30, 2020.	Report covering Q1 2020 due May 29, 2020.

in the Adopting Release was May 20, 2019. The April 2019 Extension did not extend the original compliance date for the amendment to Rule 605.

[6] *See* Exchange Act Release No. 86874 (September 4, 2019), 84 FR 47625 (September 10, 2019) (''September 2019 Extension''). As set forth in the September 2019 Extension, ''self-routing activity'' refers to when a broker-dealer handles customers' orders using its own systems and ''outsourced routing activity'' refers to when a broker-dealer uses the order routing systems of another broker-dealer.

[7] *See* FIF/STA Letter, *supra* note 2. FIF and STA did not request an extension of monthly customer-specific reporting for not held orders for self-routing broker-dealers. *See id.* The reporting requirement for self-routing activity has already come due and is ongoing.

[8] *Id.*

[9] 17 CFR 242.606(c).

[10] 17 CFR 200.30–3(a)(69).

[11] The Commission is granting the exemption as requested by FIF and STA. *See* FIF/STA Letter, *supra* note 2. Broker-dealers are still required to collect the held order data required by Rule 606(a) for the full second quarter of 2020, and to provide the public report of that data by the end of July 2020.

[12] The Commission is granting the exemption as requested by FIF/STA. *See* FIF/STA Letter, *supra* note 2.

[13] Rule 606(b)(3) requires a broker-dealer to provide a report to its customer within seven business days of receiving the customer request. Similar to the relief provided to broker-dealers in the September 2019 Extension, the Commission believes it is appropriate to provide broker-dealers additional time to prepare the first report of June data in response to customer requests received in early July. Accordingly, the report for any request received on or before July 17 would not be due until July 29. For example, if a customer requests a report of June 2020 data on July 1, 2020, the broker-dealer is not required to provide the report within seven business days of July 1, 2020; instead, the broker-dealer is required to provide the report no later than July 29, 2020. The report for any request received after July 17 would be due seven business days after such request.

Who?	What?	Current requirement	Exemption
Monthly Customer-Specific Reporting (upon request):			
Self-routing broker-dealers	Detailed customer-specific order handling disclosures for NMS stock orders submitted on a *not held* basis.	Data collection began Jan. 1, 2020; first report (covering January) was due Feb. 25, 2020.	None.
Broker-dealers that outsource routing (white-labeling).	....	Data collection begins Apr. 1, 2020; first report (covering April) due May 27, 2020.	Data collection begins June 1, 2020; first report (covering June) due July 29, 2020 for customer requests made on or before July 17.

* This requires disclosure of material aspects of broker-dealer's relationship with routing venues, which includes the details of any arrangement with a venue where the level of execution quality is negotiated for an increase or decrease in payment for order flow. *See* Adopting Release at 58376, n. 397.

Accordingly, *it is ordered*, pursuant to Rule 606(c) of Regulation NMS under the Exchange Act,[14] that:

(1) Broker-dealers are exempt from the requirement to provide the public report of held order data for the first quarter of 2020 required by Rule 606(a) until May 29, 2020.

(2) Broker-dealers engaged in outsourced routing activity are exempt from the requirement to start collecting the Rule 606(b)(3) data until June 1, 2020 for such activity. For customer requests that are made on or before July 17, 2020, a broker-dealer is exempt from the requirement to provide a Rule 606(b)(3) report for outsourced routing activity covering June 2020 data until July 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06621 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88476; File No. SR–PEARL–2020–03]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities

March 25, 2020.

On January 24, 2020, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules governing the trading of equity securities. The proposed rule change was published for comment in the **Federal Register** on February 12, 2020.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is March 28, 2020.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates May 12, 2020, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–PEARL–2020–03).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06610 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88469; File No. SR–NSCC–2020–801]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of No Objection To Advance Notice To Enhance the Calculation of the Family-Issued Securities Charge

March 25, 2020.

On January 28, 2020, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–NSCC–2020–801 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Exchange Act'')[3] to amend the calculation of NSCC's existing margin charge applied to long positions in Family-Issued Securities[4] to address certain risk presented by these positions. The Advance Notice was published for public comment in the

[14] 17 CFR 242.606(c).

[15] 17 CFR 200.30–3(a)(69).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88132 (February 6, 2020), 85 FR 8053.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] Terms not defined herein are defined in NSCC's Rules and Procedures (''Rules''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

Federal Register on February 27, 2020,[5] and the Commission has received no comments regarding the changes proposed in the Advance Notice.[6] This publication serves as notice of no objection to the Advance Notice.

I. The Advance Notice

A. Background

NSCC provides clearing, settlement, risk management, central counterparty services, and a guarantee of completion for virtually all broker-to-broker trades involving equity securities, corporate and municipal debt securities, and certain other securities. NSCC manages its credit exposure to its Members by determining an appropriate Required Fund Deposit for each Member, which serves as each Member's margin.[7] The aggregate of all NSCC Members' Required Fund Deposits (together with certain other deposits required under the Rules) constitutes NSCC's Clearing Fund, which NSCC would access should a Member default and that Member's Required Fund Deposit, upon liquidation, is insufficient to satisfy NSCC's losses.

Each Member's Required Fund Deposit consists of a number of applicable components, each of which is calculated to address specific risks faced by NSCC.[8] NSCC states that it regularly assesses the market, liquidity, and other risks that its margining methodologies are designed to mitigate to evaluate whether margin levels are commensurate with the particular risk attributes of each relevant product, portfolio, and market.[9] Such risks include risks introduced by its counterparties or Members. In particular, NSCC seeks to identify and mitigate its exposures to specific wrong-way risk (''SWWR''), which is the risk that an exposure to a counterparty is highly likely to increase when the creditworthiness of that counterparty deteriorates. Such risk would arise when NSCC acts as central counterparty to a Member with unsettled long positions in securities that were issued by a Member or an affiliate of that Member (''Family-Issued Securities''). If that Member defaults, NSCC would seek to cover its losses by closing out the unsettled Family-Issued Securities long positions. However, because the Member default would also likely lead to a drop in the creditworthiness of the Member and, therefore, the value of the Family-Issued Securities, NSCC would likely not be able to completely cover its losses in closing out those positions.

In order to address this particular form of SWWR, NSCC imposes a charge on all Members with unsettled long positions in their own Family-Issued Securities, called the FIS Charge, which is calculated by multiplying the value of the net unsettled long positions in Family-Issued Securities by a certain percentage (''Haircut Rate''). Currently, the Haircut Rate applied in the FIS Charge calculation is based on a Member's rating category on NSCC's Credit Risk Rating Matrix (''CRRM''), which ranges from 1 to 7. NSCC utilizes the CRRM to evaluate its credit risk exposure to each Member; a higher CRRM rating represents a higher credit risk (*i.e.,* a greater risk of defaulting on settlement obligations) and may cause a Member to be subject to enhanced surveillance or additional margin requirements.[10]

Currently, the applicable Haircut Rate for the FIS Charge depends on a Member's rating on the CRRM. Specifically, for Members that are rated 6 or 7 on the CRRM, the applicable Haircut Rate for net unsettled long positions in Family-Issued Securities shall be (1) at least 80 percent for fixed income securities, and (2) 100 percent for equity securities. For Members that are rated 1 through 5 on the CRRM, the applicable Haircut Rate shall be (1) at least 40 percent for fixed income securities, and (2) at least 50 percent for equity securities.[11]

B. Proposed Changes to FIS Charge

In the Advance Notice, NSCC is proposing to revise the calculation of the FIS Charge to use the same Haircut Rate for all Members regardless of their CRRM rating category. Under the proposal, net unsettled long positions in (1) fixed income securities that are Family-Issued Securities are charged a Haircut Rate of no less than 80 percent, and (2) equity securities that are Family-Issued Securities are charged a Haircut Rate of 100 percent.

NSCC states that it may still be exposed to SWWR despite applying different Haircut Rates based on a Member's rating on the CRRM, and it can better mitigate its exposure to this risk by calculating the FIS Charge without considering Members' CRRM rating categories.[12] According to NSCC, while the current methodology appropriately assumes that Members with a higher rating category on the CRRM present a heightened credit risk to NSCC or have demonstrated higher risk related to their ability to meet settlement, this methodology does not account for the risk that a Member may default due to unanticipated causes (referred to as a ''jump-to-default'' scenario) not captured by the CRRM.[13] This is because the CRRM relies on historical data as a predictor of future risks,[14] whereas jump-to-default scenarios are triggered by unanticipated causes that could not be predicted based on historical trends or data (*e.g.,* instances of fraud or other bad actions by a Member's management). Therefore, NSCC represents that the proposed change is designed to cover SWWR arising from potential jump-to-default scenarios by applying the higher applicable Haircut Rate in calculating the FIS Charge for all Members.[15]

The practical outcome of this proposed change is that for all Family Issued Securities, NSCC would apply a haircut equivalent to the current Haircut Rate for Members that are rated 6 or 7 on the CRRM regardless of whether a Member is rated at a 6 or 7. To implement this proposal, NSCC would amend Sections I.(A)(1)(a)(iv) and I.(A)(2)(a)(iv) of Procedure XV of the Rules.

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[5] Securities Exchange Act Release No. 88267 (Feb. 24, 2020), 85 FR 11437 (Feb. 27, 2020) (SR–NSCC–2020–801) (''Notice of Filing''). On January 28, 2020, NSCC also filed a related proposed rule change (SR–NSCC–2020–002) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder (''Proposed Rule Change''). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. In the Proposed Rule Change, which was published in the **Federal Register** on February 18, 2020, NSCC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. Securities Exchange Act Release No. 88163 (Feb. 11, 2020), 85 FR 8964 (Feb. 18, 2020). The comment period for the related Proposed Rule Change filing closed on March 10, 2020.

[6] Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice.

[7] Terms not defined herein are defined in NSCC's Rules and Procedures (''Rules''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf. See* Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the Rules.

[8] *Id.*

[9] *See* Notice of Filing *supra* note 5, at 85 FR 11437.

[10] *See* Rule 1 and Section 4 of Rule 2B of the Rules, *supra* note 8. *See also* Securities Exchange Act Release Nos. 80734 (May 19, 2017), 82 FR 24177 (May 25, 2017) (SR–DTC–2017–002, SR–FICC–2017–006, SR–NSCC–2017–002); and 80731 (May 19, 2017), 82 FR 24174 (May 25, 2017) (SR–DTC–2017–801, SR–FICC–2017–804, SR–NSCC–2017–801).

[11] *See* Procedure XV (Clearing Fund Formula and Other Matters) of the Rules, *supra* note 7.

[12] *See* Notice of Filing *supra* note 5, at 85 FR 11438.

[13] *See id.*

[14] *See id.*

[15] *See id.*

II. Discussion and Commission Findings

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for SIFMUs and strengthening the liquidity of SIFMUs.[16]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[17] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):[18]

- To promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among others areas.[19]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[20] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[21] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the proposal in the Advance Notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[22] and in Rules 17Ad–22(e)(4)(i) [23] and (e)(6)(i) and (v) [24] of the Clearing Agency Rules.

A. Consistency With Section 805(b) of the Clearing Supervision Act

For the reasons discussed immediately below, the Commission believes that the Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act.[25] Specifically, as discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the broader financial system.[26]

First, the Commission believes that the proposal is consistent with promoting robust risk management. NSCC faces SWWR when it acts as central counterparty to a Member with long positions in FIS. Although NSCC's current margin methodology addresses SWWR through imposition of the FIS Charge, it does not address SWWR associated with a jump-to-default scenario. As described above, the proposal would address SWWR associated with a jump-to-default scenario by using the higher applicable Haircut Rate for all Members concerning their net unsettled long positions in Family-Issued Securities, regardless of the Members' CRRM rating category. As such, the proposal would address a risk not captured currently under NSCC's margin methodology and provide for more comprehensive risk management of NSCC's risks, consistent with the promotion of robust risk management.

Second, the Commission believes that the proposal is consistent with the promotion of safety and soundness at NSCC. The collection of additional margin, by applying the higher applicable Haircut Rate in calculating the FIS Charge for all Members, would better enable NSCC to manage the potential losses arising out of a Member default. Holding additional resources to address such losses would promote NSCC's safety and soundness.

Finally, the Commission believes that the proposal is consistent with reducing systemic risk and supporting the broader financial system. As discussed above, NSCC proposes to collect additional margin to collateralize exposures to SWWR associated with a jump-to-default scenario, which could reduce the probability that NSCC would mutualize a loss stemming from the close-out of a defaulted Member with net unsettled long positions in Family-Issued Securities. While unavoidable under certain circumstances, reducing the probability of loss mutualization during periods of market stress could lessen the transmission of financial risks arising from a Member default to non-defaulting Members, their customers, and the broader market. Further, NSCC maintaining additional margin could further reduce the potential that NSCC would need to call for additional resources from Members in times of market stress. The Commission believes, therefore, that the proposal would be consistent with reducing systemic risk and supporting the stability of the broader financial system. Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.

B. Consistency With Rule 17Ad–22(e)(4)(i)

Rule 17Ad–22(e)(4)(i) under the Act requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.[27]

As described above, NSCC is exposed to SWWR where it acts as central counterparty for its Members' transactions in Family-Issued Securities. Applying the same higher Haircut Rate to all Members with net long unsettled positions in Family-Issued Securities, regardless of their rating on the CRRM, would help further mitigate NSCC's SWWR exposures, especially in a jump-to-default scenario. Therefore, applying the same Haircut Rate in the FIS charge calculation is designed to help NSCC collect sufficient financial resources to help cover its credit exposures, with a high degree of confidence, to those Members seeking to clear and settle transactions in Family-Issued Securities. Therefore, the Commission believes the

[16] *See* 12 U.S.C. 5461(b).

[17] 12 U.S.C. 5464(a)(2).

[18] 12 U.S.C. 5464(b).

[19] 12 U.S.C. 5464(c).

[20] 17 CFR 240.17Ad-22. *See* Securities Exchange Act Release No. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11). *See also* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards''). NSCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[21] *Id.*

[22] 12 U.S.C. 5464(b).

[23] 17 CFR 240.17Ad–22(e)(4)(i).

[24] 17 CFR 240.17Ad–22(e)(6)(i) and (v).

[25] 12 U.S.C. 5464(a)(2) and (b).

[26] 12 U.S.C. 5464(b).

[27] 17 CFR 240.17Ad–22(e)(4)(i).

proposed change is consistent with Rule 17Ad–22(e)(4)(i).[28]

C. Consistency With Rule 17Ad–22(e)(6)(i) and (v)

Rule 17Ad–22(e)(6)(i) under the Act requires that each covered clearing agency that provides central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[29] Rule 17Ad–22(e)(6)(v) under the Act requires that each covered clearing agency that provides central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.[30]

As described above, NSCC faces SWWR in jump-to-default scenarios where it acts as central counterparty to Member transactions in Family-Issued Securities. This risk is present regardless of a Member's rating on the CRRM. However, the current methodology assumes that Members with a higher rating on the CRRM present a heightened credit risk to NSCC and applies a higher Haircut Rate to such Members. This distinction does not take into account the SWWR that would manifest in a jump-to-default scenario. As such, NSCC proposes to apply the same higher Haircut Rate to all Members. This proposal would improve NSCC's ability to mitigate its exposure to SWWR in a jump-to-default scenario, thereby helping NSCC to maintain a risk-based margin system that considers, and produces margin levels commensurate with, the risks and particular attributes of net unsettled long positions in Family-Issued Securities. Therefore, the Commission believes that the proposal would be consistent with Rule 17Ad–22(e)(6)(i).[31]

Additionally, because the enhanced FIS Charge would be a component of the margin that NSCC collects from its Members to help cover NSCC credit exposure to the Members, and because the charge would be based on different product risk factors with respect to equity and fixed-income securities, it would be part of an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products, as described above. Therefore, the Commission believes the proposed change is consistent with Rule 17Ad–22(e)(6)(v).[32]

III. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR–NSCC–2020–801) and that NSCC is *authorized* to implement the proposal as of the date of this notice or the date of an order by the Commission approving proposed rule change SR–NSCC–2020–002, whichever is later.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06598 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88473; File No. SR–Phlx–92020–14]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 8, Openings in Options

March 25, 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 March 24, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rules at Options 3, Section 8, titled ''Openings in Options.''

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

The Exchange proposes to amend Phlx Rules at Options 3, Section 8, titled ''Openings in Options.'' The Exchange proposes to rename this rule ''Options Opening Process.'' Specifically, the Exchange is proposing to amend the definition of ''market for the underlying security'' within Options 3, Section 8(a)(ii).

Today Options 3, Section 8(a)(ii) describes ''market for the underlying security'' as ''. . .either the primary listing market or the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), as determined by the Exchange by underlying and announced to the membership on the Exchange's website.''

The Exchange proposes to amend this definition by replacing the term ''primary volume market'' with ''an alternative market designated by the primary market.'' The Exchange anticipates that an alternative market would be necessary if the primary listing market were impaired.[3] In the event that a primary market is impaired and utilizes its designated alternative market, the Exchange would utilize that market as the underlying.[4] The

[28] *Id.*

[29] 17 CFR 240.17Ad–22(e)(6)(i).

[30] 17 CFR 240.17Ad–22(e)(6)(v).

[31] 17 CFR 240.17Ad–22(e)(6)(i).

[32] 17 CFR 240.17Ad–22(e)(6)(v).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that the primary listing market and the primary volume market as defined in Phlx's Rules could be the same market and therefore an alternative market is not available under the current Rule.

[4] For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE

Exchange further proposes an additional contingency. In the event that the primary market is unable to open, and an alternative market is not designated (and/or the designated alternative market does not open), the Exchange may utilize a non-primary market to open all underlying securities from the primary market. The Exchange will select the non-primary market with the most liquidity in the aggregate for all underlying securities that trade on the primary market for the previous two calendar months, excluding the primary and alternate markets. The Exchange notes that in order to open an option series it would require an equity market's underlying quote. If another equity market displays opening prices for the underlying security, the Exchange proposes to utilize those quotes. This proposed change to the current System would allow the Exchange to open in situations where the primary market is experiencing an issue and also where an alternative market designated by the primary market may not be designated by the primary market or is unable to open. The Exchange believes that this proposal would effectively provide the Exchange with additional opportunities to open the market and provide its members with a venue in which to transact options trading. The Exchange notes that utilizing a non-primary market with the most liquidity in the aggregate for all underlying securities for the previous two calendar months will ensure that the Exchange opens with quotes which are representative of the volume on that primary market. The Exchange believes that this proposal will enable it to open in the event that there are issues with the primary market or the alternate market assigned by the primary.

The Exchange also proposes to make a corresponding amendment to Options 3, Section 8(d)(ii) to replace the reference to ''primary market'' with the defined term ''market for the underlying security.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by providing for alternative processes to determine the market for the underlying. The Exchange's proposal to amend the definition of ''market for the underlying security'' within Options 3, Section 8(a)(ii) is consistent with the Act.

First, the Exchange's proposal would remove the concept of a primary volume market and replace that concept with an alternative market designated by the primary market. The Exchange notes that it is most likely the case that the primary market is the primary volume market, so this term offers no contingency in most cases. The primary market has the ability to designate an alternate primary market when the primary market is experiencing difficulties. In those situations, the Exchange proposes to utilize the alternate primary market to open its market. For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca as its alternative market, then Phlx would utilize NYSE Arca as the market for the underlying security.

Second, the Exchange proposes another alternative in the event that the primary market does not open and an alternate primary market is not designated and/or is also unable to open. In this situation, the Exchange proposes to utilize a non-primary market to open its market. The Exchange will select the non-primary market with the most liquidity in the aggregate for all underlying securities from the primary market for the previous two calendar months, excluding the primary and alternate markets. For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca as its alternative market, and the alternate primary was unable to open or NYSE was unable to designate an alternate market because of system difficulties, then Phlx would determine which non-primary market had the most liquidity in the aggregate for all underlying securities for the previous two calendar months, excluding the primary and alternate markets. The Exchange would utilize that market to open all underlying securities from the primary market. The Exchange notes that in order to open an option series it would require an equity market's underlying quote. The Exchange notes that utilizing a non-primary market with the most liquidity in the aggregate for all underlying securities for the previous two calendar months will ensure that the Exchange opens based on the next best alternative to the primary market given the circumstances. This contingency will provide the Exchange with the ability to open in situations where the primary market is experiencing an issue and also where an alternative primary market may also be impacted.

The Exchange believes that this proposal would protect investors and the general public by providing additional venues for Phlx to utilize as part of its Opening Process and thereby allow investors to transact on its market. The Exchange desires to open its market despite any issues that may arise with the underlying market. The Exchange is proposing alternate methods to open its market to account for situations which may arise if the primary market is unable to open, and if the proposed alternate designated market is unable to open. The Exchange notes that once the market opens with an underlying price, the options market may continue to trade for the remainder of the trading day. The Exchange believes it benefits investors and the general public to have the options market available to enter new positions, or close open positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Amending the definition of ''market for the underlying security'' within Options 3, Section 8(a)(ii) does not burden competition. The Exchange's proposal offers alternative paths to open Phlx in the event that the primary market or even a designated alternate primary market experiences an issue. The Exchange's proposal is intended to create additional certainty that in the event of an issue with the primary market, the Exchange would have other equity markets to look to with respect to underlying prices on which to open Phlx. This proposal also does not impact the ability of other options markets to open.

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

Arca, Inc. (''NYSE Arca'') as its alternative market, then PHLX would utilize NYSE Arca as the market for the underlying.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may amend its rules to permit the Exchange to utilize additional venues to open its market if the primary market and any designated alternate market for the underlying security are experiencing an issue and unable to open, thereby allowing investors to transact on its market in such a situation. The Exchange believes that having its options market available to enter new positions or close open positions would benefit investors and the general public. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[11]

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–2020–14 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–2020–14. 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–2020–14 and should be submitted on or before April 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06612 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88471; File No. SR–MRX–2020–08]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 8, Opening

March 25, 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 March 24, 2020, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend MRX Rules at Options 3, Section 8, titled ''Opening.''

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend MRX Rules at Options 3, Section 8, titled ''Opening.'' The Exchange proposes to rename this rule ''Options Opening Process.'' Specifically, the Exchange is proposing to amend the definition of ''market for the underlying security.''

Today Options 3, Section 8(a)(2) describes ''market for the underlying security'' as ''. . . either the primary listing market or the primary volume market (defined as the market with the most liquidity in that underlying security for the previous two calendar months), as determined by the Exchange by underlying and announced to the membership on the Exchange's website.''

The Exchange proposes to amend this definition by replacing the term ''primary volume market'' with ''an alternative market designated by the primary market.'' The Exchange anticipates that an alternative market would be necessary if the primary listing market were impaired.[3] In the event that a primary market is impaired and utilizes its designated alternative market, the Exchange would utilize that market as the underlying.[4] The Exchange further proposes an additional contingency. In the event that the primary market is unable to open, and an alternative market is not designated (and/or the designated alternative market does not open), the Exchange may utilize a non-primary market to open all underlying securities from the primary market. The Exchange will select the non-primary market with the most liquidity in the aggregate for all underlying securities that trade on the primary market for the previous two calendar months, excluding the primary and alternate markets. The Exchange notes that in order to open an option series it would require an equity market's underlying quote. If another equity market displays opening prices for the underlying security, the Exchange proposes to utilize those quotes. This proposed change to the current System would allow the Exchange to open in situations where the primary market is experiencing an issue and also where an alternative market designated by the primary market may not be designated by the primary market or is unable to open. The Exchange believes that this proposal would effectively provide the Exchange with additional opportunities to open the market and provide its members with a venue in which to transact options trading. The Exchange notes that utilizing a non-primary market with the most liquidity in the aggregate for all underlying securities for the previous two calendar months will ensure that the Exchange opens with quotes which are representative of the volume on that primary market. The Exchange believes that this proposal will enable it to open in the event that there are issues with the primary market or the alternate market assigned by the primary.

The Exchange also proposes to make a corresponding amendment to Options 3, Section 8(c)(2) to replace the reference to ''primary market'' with the defined term ''market for the underlying security.''

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by providing for alternative processes to determine the market for the underlying. The Exchange's proposal to amend the definition of ''market for the underlying security'' within Options 3, Section 8(a)(2) is consistent with the Act.

First, the Exchange's proposal would remove the concept of a primary volume market and replace that concept with an alternative market designated by the primary market. The Exchange notes that it is most likely the case that the primary market is the primary volume market, so this term offers no contingency in most cases. The primary market has the ability to designate an alternate primary market when the primary market is experiencing difficulties. In those situations, the Exchange proposes to utilize the alternate primary market to open its market. For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca as its alternative market, then MRX would utilize NYSE Arca as the market for the underlying security.

Second, the Exchange proposes another alternative in the event that the primary market does not open and an alternate primary market is not designated and/or is also unable to open. In this situation, the Exchange proposes to utilize a non-primary market to open its market. The Exchange will select the non-primary market with the most liquidity in the aggregate for all underlying securities from the primary market for the previous two calendar months, excluding the primary and alternate markets. For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca as its alternative market, and the alternate primary was unable to open or NYSE was unable to designate an alternate market because of system difficulties, then MRX would determine which non-primary market had the most liquidity in the aggregate for all underlying securities for the previous two calendar months, excluding the primary and alternate markets. The Exchange would utilize that market to open all underlying securities from the primary market. The Exchange notes that in order to open an option series it would require an equity market's underlying quote. The Exchange notes that utilizing a non-primary market with the most liquidity in the aggregate for all underlying securities for the previous two calendar months will ensure that the Exchange opens based on the next best alternative to the primary market given the circumstances. This contingency will provide the Exchange with the ability to open in situations where the primary market is experiencing an issue and also where an alternative primary market may also be impacted.

The Exchange believes that this proposal would protect investors and the general public by providing additional venues for MRX to utilize as part of its Opening Process and thereby allow investors to transact on its market. The Exchange desires to open its market despite any issues that may arise with the underlying market. The Exchange is proposing alternate methods to open its market to account for situations which may arise if the primary market is unable to open, and if the proposed alternate designated market is unable to open. The Exchange notes that once the market opens with an underlying price, the options market may continue to trade for the remainder of the trading day. The Exchange believes it benefits

[3] The Exchange notes that the primary listing market and the primary volume market as defined in MRX's Rules could be the same market and therefore an alternative market is not available under the current Rule.

[4] For example, in the event that the New York Stock Exchange LLC was unable to open because of an issue with its market and it designated NYSE Arca, Inc. (''NYSE Arca'') as its alternative market, then PHLX [sic] would utilize NYSE Arca as the market for the underlying.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

investors and the general public to have the options market available to enter new positions, or close open positions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Amending the definition of ''market for the underlying security'' within Options 3, Section 8(a)(2) does not burden competition. The Exchange's proposal offers alternative paths to open the Exchange in the event that the primary market or even a designated alternate primary market experiences an issue. The Exchange's proposal is intended to create additional certainty that in the event of an issue with the primary market, the Exchange would have other equity markets to look to with respect to underlying prices on which to open the Exchange. This proposal also does not impact the ability of other options markets to open.

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) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [9] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange may amend its rules to permit the Exchange to utilize additional venues to open its market if the primary market and any designated alternate market for the underlying security are experiencing an issue and unable to open, thereby allowing investors to transact on its market in such a situation. The Exchange believes that having its options market available to enter new positions or close open positions would benefit investors and the general public. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[11]

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–2020–08 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–MRX–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–MRX–2020–08 and should be submitted on or before April 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–06615 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: On August 20, 2019 (August 20 notice), at the direction of the President, the U.S. Trade Representative determined to modify the action being taken in the investigation by imposing additional duties of 10 percent *ad valorem* on goods of China with an annual trade value of approximately $300 billion as part of the action in the Section 301 investigation of China's

acts, policies, and practices related to technology transfer, intellectual property, and innovation. The additional duties on products in List 1, which is set out in Annex A of the August 20 notice, became effective on September 1, 2019. On August 30, 2019, at the direction of the President, the U.S. Trade Representative determined to increase the rate of the additional duty applicable to the tariff subheadings covered by the August 20 notice from 10 percent to 15 percent. On January 22, 2020, the U.S. Trade Representative determined to reduce the rate from 15 percent to 7.5 percent. The U.S. Trade Representative initiated a product exclusion process in October 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant certain exclusion requests, as specified in the Annex to this notice. The U.S. Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions announced in this notice will apply as of September 1, 2019, the effective date of List 1 of the August 2 notice, and will extend to September 1, 2020.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 84 FR 20459 (May 9, 2019), 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019), 84 FR 69447 (December 18, 2019), 85 FR 3741 (January 22, 2020), 85 FR 13970 (March 10, 2020), and 85 FR 15244 (March 17, 2020).

In the August 20 notice (84 FR 43304), the U.S. Trade Representative, at the direction of the President, announced a determination to modify the action being taken in the Section 301 investigation by imposing an additional 10 percent *ad valorem* duty on products of China with an annual aggregate trade value of approximately $300 billion. The August 20 notice contains two separate lists of tariff subheadings, with two different effective dates. List 1, which is set out in Annex A of the August 20 notice, was effective September 1, 2019. List 2, which is set out in Annex C of the August 20 notice, was scheduled to take effect on December 15, 2019.

On August 30, 2019 (84 FR 45821), the U.S. Trade Representative, at the direction of the President, determined to modify the action being taken in the investigation by increasing the rate of additional duty from 10 to 15 percent *ad valorem* on the goods of China specified in Annex A (List 1) and Annex C (List 2) of the August 20 notice. On October 24, 2019 (October 24 notice), the U.S. Trade Representative established a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit Harmonized Tariff Schedule of the United States (HTSUS) subheading covered by List 1 of the August 20 notice from the additional duties. *See* 84 FR 57144. Subsequently, the U.S. Trade Representative announced a determination to suspend until further notice the additional duties on products set out in Annex C (List 2) of the August 20 notice. *See* 84 FR 69447 (December 18, 2019). The U.S. Trade Representative later determined to further modify the action being taken by reducing the additional duties for the products covered in Annex A of the August 20 notice (List 1) from 15 percent to 7.5 percent. *See* 85 FR 3741 (January 22, 2020).

Under the October 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the August 20 notice. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years, among other information. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The October 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The October 24 notice required submission of requests for exclusion from List 1 of the August 20 notice no later than January 31, 2020, and noted that the U.S. Trade Representative periodically would announce decisions. In March 2020, the U.S. Trade Representative announced two sets of exclusions. *See* 85 FR 13970 and 85 FR 15244. The Office of the United States Trade Representative regularly updates the status of each pending request on the Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0017.*

B. Determination To Grant Certain Exclusions

Based on evaluation of the factors set out in the October 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex, the exclusions are reflected in five 10-digit HTSUS subheadings and 7 specially prepared product descriptions, which together cover 36 separate exclusion requests.

In accordance with the October 24 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the 10-digit HTSUS subheading as described in the Annex, and not by the product descriptions set out in any particular request for exclusion.

Paragraph A, subparagraphs (3)–(4) of the Annex contain conforming amendments to the HTSUS reflecting the modifications made by the Annex.

As stated in the October 24 notice, the exclusions will apply from September 1, 2019, the effective date of List 1 of the August 20 notice, and will extend for one year to September 1, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 1, 2019, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. by inserting the following new heading 9903.88.44 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled ''Heading/Subheading'', ''Article Description'', and ''Rates of Duty 1-General'', respectively:

Heading/ subheading	Article description	Rates of duty		
		1		2
		General	Special	
''9903.88.44	Articles the product of China, as provided for in U.S. note 20(ww) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative.	The duty provided in the applicable subheading''.		

2. by inserting the following new U.S. note 20(ww) to subchapter III of chapter 99 in numerical sequence:

''(ww) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.15 and provided for in U.S. notes 20(r) and (s) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.15. See 84 FR 43304 (August 20, 2019), 84 FR 45821 (August 30, 2019), 84 FR 57144 (October 24, 2019) and 85 FR 3741 (January 22, 2020). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.15 shall not apply to the following particular products, which are provided for in the following enumerated statistical reporting numbers:

(1) 0505.10.0050

(2) 3926.90.9925

(3) 6506.10.3045

(4) 8512.10.2000

(5) 8528.72.6420

(6) Coverings, of plastics, designed to fit over wound sites or casts thereby forming a protective seal for keeping the covered area dry and debris free while showering or bathing (described in statistical reporting number 3926.90.9990)

(7) Pouches of plastics, of a kind used with manually operated pill or tablet crushers to capture the powdered medicaments (described in statistical reporting number 3926.90.9990)

(8) Refillable dispensers of plastics, designed for mounting on a vertical wall, of a kind used to store and dispense emesis containment bags in medical settings (described in statistical reporting number 3926.90.9990)

(9) Sterile urology drain bags of plastics, designed to fit over a urology table extension, with a flap extension that provides sterile separation of the patient from the table surface and directs fluids into and through a filter at the top of an attached drain hose leading to a collection container (described in statistical reporting number 3926.90.9990)

(10) Ice bags of textile materials, for treating injuries or soreness, each refillable (described in statistical reporting number 6307.90.9889)

(11) Identification wristbands of textile materials, each with a blank panel (described in statistical reporting number 6307.90.9889)

(12) Apparatus suitable for wearing on the wrist, having time-display functions, each article having an accelerometer and being capable of displaying and transmitting data sent to it by a network (*e.g.,* portable ADP unit, LAN or cellular network) (described in statistical reporting number 8517.62.0090)''

3. by amending the last sentence of the first paragraph of U.S. note 20(r) to subchapter III of chapter 99:

a. by inserting ''; or (3) heading 9903.88.44 and U.S. note 20(ww) to subchapter III of chapter 99'' after ''U.S. note 20(uu) to subchapter III of chapter 99'';

b. by deleting ''except as provided in heading 9903.88.39'' and by inserting ''except as provided in: (1) Heading 9903.88.39'' in lieu thereof; and

c. by deleting ''chapter 99 except as provided in heading 9903.88.42'' and by inserting ''chapter 99; (2) heading 9903.88.42'' in lieu thereof.

4. by amending the article description of heading 9903.88.15;

a. by deleting ''heading 9903.88.39 or'' and inserting ''headings 9903.88.39,'' in lieu thereof;

b. by deleting ''heading 9903.88.42,'' and inserting ''9903.88.42,'' in lieu thereof; and

c. by inserting ''or 9903.88.44,'' after ''9903.88.42,''.

[FR Doc. 2020–06600 Filed 3–30–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0010]

Postponement of Field Hearings Regarding Trade Distorting Policies That May Be Affecting Seasonal and Perishable Products in U.S. Commerce

AGENCY: Office of the United States Trade Representative.

ACTION: Postponement of public hearings and extended deadline to submit comments.

SUMMARY: On March 10, 2020, the Office of the U.S. Trade Representative (USTR) announced that USTR and the Departments of Agriculture and Commerce would convene public hearings in Florida and Georgia to hear firsthand from interested persons on trade distorting policies that may be causing harm to U.S. seasonal and perishable producers. Consistent with guidance issued by the Centers for Disease Control and Prevention's concerning COVID–19, USTR is postponing the public hearings and will announce rescheduled dates. USTR will continue to accept written comments.

DATES:

Field Hearings: The field hearings scheduled for April 7, 2020, in Plant City, Florida, and April 9, 2020, in Valdosta, Georgia are postponed and will be rescheduled at later date.

Comments: USTR is waiving the March 26, 2020, submission deadline and encourages interested persons to file comments and supporting documentation via *www.regulations.gov,* using docket number USTR–2020–0010. The instructions for submission are in section II of the notice published on March 10, 2020 (85 FR 13973). For alternatives to online submissions, please contact Trey Forsyth in advance of the submission deadline at (202) 395–8583.

FOR FURTHER INFORMATION CONTACT: Trey Forsyth at (202) 395–8583.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

[FR Doc. 2020–06049 Filed 3–30–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0302]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Certification and Operations: Airplanes With Seating Capacity of 20 or More Passenger Seats or Maximum Payload of 6,000 Pounds or More—FAR 125

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection involves the certification and operation of aircraft with seating capacity of 20 or more passengers, or maximum payload of 6,000 pounds or more, and includes the operator application requirements, maintenance requirements, and various operational requirements.

DATES: Written comments should be submitted by June 1, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: *www.regulations.gov* (Enter docket number into search field)

By mail: Dwayne C. Morris, 800 Independence Ave. SW, Washington, DC 20591

By fax: (202) 267–1078

FOR FURTHER INFORMATION CONTACT: Ronald A. Forsyth by email at: *ronald.a.forsyth@faa.gov;* phone: (717) 712–1000.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0085

Title: Certification and Operations: Airplanes with Seating Capacity of 20 or More Passenger Seats or Maximum Payload of 6,000 Pounds or More—FAR 125

Form Numbers: None.

Type of Review: Renewal.

Background: The reporting and recordkeeping requirements under this collection are necessary for the FAA to issue, reissue, and amend part 125 applicants' operating certificates and operation specifications. A letter of application and related documents which set forth an applicant's ability to conduct operations in compliance with the provisions of 14 CFR part 125 are submitted to the appropriate Flight Standards District Office (FSDO). Inspectors in FAA FSDOs review the submitted information to determine certificate eligibility. If the letter of application, related documents, and inspection show that the applicant satisfactorily meets acceptable safety standards, an operating certificate and operations specifications will be issued. If the information were not collected, the FAA could not discharge its responsibility to promote the safety of large airplane operators during such operations.

Respondents: 85 certificated part 125 operators (75 existing operators and 10 new applicants per year).

Frequency: On occasion.

Estimated Average Burden per Response: 13 minutes.

Estimated Total Annual Burden: 50,378 hours total; 593 hours per respondent.

Issued in Washington, DC, on March 25, 2020.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2020–06591 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Finding of No Significant Impact/Record of Decision and Adoption of the United States Marine Corps Environmental Assessment for the Establishment of the Walker Military Operations Area

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of Availability of the Finding of No Significant Impact (FONSI)/Record of Decision (ROD).

SUMMARY: The FAA announces its decision to adopt the United States Marine Corps (USMC) Environmental Assessment (EA), entitled *Marine Corps Mountain Warfare Training Center [MCMWTC] Bridgeport Walker Military Operations Area [MOA] Airspace Establishment,* for the establishment of two MOAs in Bridgeport, California. This notice announces that, based on its independent review and evaluation of the EA and supporting documents, the FAA is adopting the EA and issuing a FONSI/ROD for the establishment of the Walker MOAs.

FOR FURTHER INFORMATION CONTACT: Paula Miller, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–7378.

SUPPLEMENTARY INFORMATION:

Background

The Proposed Action is to establish Special Use Airspace (SUA) consisting of two MOAs—the Walker Low MOA and Walker High MOA—in airspace located above and adjacent to MCMWTC. The proposal for the MOAs is to designate airspace, outside of Class A airspace (*i.e.,* below 18,000 feet above mean sea level [MSL]), to: (1) Separate or segregate certain nonhazardous military flight activities (including, but not limited to, air combat maneuvers, air intercepts, low altitude tactics) from Instrument Flight Rules (IFR) traffic; and (2) for Visual Flight Rules (VFR) traffic, to identify (in sectional charts and via Notice to Airman [NOTAM]) where and when these activities are conducted. The Proposed Action is needed to address training delays and flight safety issues (*e.g.,* near-midair collisions) that have occurred when nonparticipating aircraft have entered the airspace when MCMWTC training activities were being conducted. This would result in enhanced flight safety for all pilots (civilian, commercial, and military) while enhancing the capability of MCMWTC to support critically required aviation and ground training. The proposed MOAs and continued use of the existing airspace are needed to enable military forces to train in an environment that is representative of realistic combat conditions. Specifically, the MCMWTC training areas and programs are imperative to the USMC and Joint Service mountain warfare readiness.

The Proposed Action was developed by the USMC to improve flight safety; accommodate joint use for reasonable and timely access to underlying public or private land; not impede public safety access for firefighting and other emergency services; support FAA Oakland Air Route Traffic Control Center's computer system and meet all FAA requirements; and not impact existing air traffic control assigned airspace.

Implementation

After evaluating the aeronautical study and the EA, the FAA has issued a FONSI/ROD to establish two MOAs. The Walker Low MOA would be established from the surface to, but not including, 13,500 feet MSL, and would be activated for up to 100 days per year for approximately 15 hours per day. The Walker High MOA would be established from 13,500 feet MSL to, but not including, FL180 (18,000 feet MSL), and would be activated for up to 40 days per year for approximately 12 hours per day. These MOAs would exclude airspace from the surface to 3,000 feet above ground level (AGL) over wilderness areas. A NOTAM would be published at least four hours in advance of activation.

In accordance with Section 102 of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's (CEQ) regulations for implementing NEPA (40 CFR parts 1500–1508), and other applicable authorities (including FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–2, and FAA Order JO 7400.2M, Procedures for Handling Airspace Matters, paragraph 32–2–3), the FAA has conducted an independent review and evaluation of the USMC's EA, dated November 4, 2019. As a cooperating agency with responsibility for approving SUA under 49 U.S.C. 40103(b)(3)(A), the FAA provided subject matter expertise and coordinated with the USMC during the environmental review process.

The USMC provided the Draft EA for public review from December 12, 2018, to January 26, 2019, and no comments were received.

The FONSI/ROD and EA are available upon request by contacting Paula Miller at: Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–7378.

Issued in Des Moines, WA, on March 25, 2020.

Shawn M. Kozica,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–06607 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0301]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Application for Certificate of Waiver or Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection affects persons who have a need to deviate from certain regulations that govern use of airspace within the United States. The request also describes the burden associated with authorizations to make parachute jumps and operate unmanned aircraft (including moored balloons, kites, unmanned rockets, and unmanned free balloons) and small unmanned aircraft systems

DATES: Written comments should be submitted by June 1, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Dwayne C. Morris, 800 Independence Ave. SW, Washington, DC 20591.

By fax: (202) 267–1078.

FOR FURTHER INFORMATION CONTACT: Raymond Plessinger by email at: *raymond.plessinger@faa.gov;* phone: (717) 774–8271.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0027.

Title: Application for Certificate of Waiver or Authorization.

Form Numbers: FAA form 7711–2.

Type of Review: Renewal.

Background: The information collected by FAA Form 7711–2, Application for Certificate of Waiver or Authorization, is reviewed and analyzed by FAA to determine the type and extent of the intended deviation from prescribed regulations. A certificate of waiver or authorization to deviate is generally issued to the applicant (individuals and businesses) if the proposed operation does not create a hazard to persons, property, or other aircraft, and includes the operation of unmanned aircraft. Applications for certificates of waiver to the provisions of Parts 91 and 101 are made by using FAA Form 7711–2. Application for authorization to make parachute jumps (other than emergency or military operations) under Part 105, Section 105.15 (airshows and meets) also uses FAA Form 7711–2. Application for other types of parachute jumping activities are submitted in various ways; *e.g.,* in writing, in person, by telephone, etc.

Persons authorized to deviate from provisions of Part 101 are required to give notice of actual activities. Persons operating in accordance with the provisions of Part 101 are also required to give notice of actual activities. In both instances, the notice of information required is the same. Therefore, the burden associated with applications for certificates of waiver or authorization and the burden associated with notices of actual aircraft activities are identified and included in this request for clearance.

Regarding operation of small unmanned aircraft systems under Part

107, to obtain a certificate of waiver, an applicant will have to submit a request containing a complete description of the proposed operation and a justification, including supporting data and documentation as necessary that establishes that the proposed operation can safely be conducted under the terms of a certificate of waiver. The FAA expects that the amount of data and analysis required as part of the application will be proportional to the specific relief that is requested.

Respondents: 26,495, including approximately 5,500 annual applications for waivers from certain sections of Part 107.

Frequency: On occasion.

Estimated Average Burden per Response: 45 minutes for non-part 107 waivers; 45.7 hours for part 107 waivers.

Estimated Total Annual Burden: 19,871 hours (not-part 107) + 251,520 (part 107) = 271,391 hours.

Issued in Washington, DC, on March 25, 2020.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2020–06592 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0303]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Small Unmanned Aircraft Systems (sUAS) Accident Reporting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The FAA requires that small unmanned aircraft accidents be reported to the FAA if they result in injury or damage exceeding certain thresholds.

DATES: Written comments should be submitted by June 1, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Dwayne C. Morris, 800 Independence Ave. SW, Washington, DC 20591.

By fax: (202) 267–1078.

FOR FURTHER INFORMATION CONTACT: Joseph K. Hemler, Jr., by email at: *Joseph.K.Hemler-Jr@faa.gov;* phone: (202) 267–0159.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0767.

Title: Small Unmanned Aircraft Systems (sUAS) Accident Reporting.

Form Numbers: N/A (web portal: *https://faadronezone.faa.gov*).

Type of Review: Renewal.

Background: 14 CFR part 107 requires that a small unmanned aircraft accident be reported if it causes: (1) serious injury to any person or any loss of consciousness; or (2) damage to any property, other than the small unmanned aircraft, unless the cost of repair or fair market value in the event of total loss does not exceed $500. The information collected by the FAA through its DroneZone web portal, Flight Standards District Offices, or one of the Regional Operations Centers or the Washington Operations Center for each small UAS accident will be used to investigate and determine regulatory compliance. In addition, the accident information will go into the FAA aircraft accident database for safety analysis purposes by the FAA Office of Accident Investigation and Analysis, pursuant to its statutory safety mission. As is currently the case for manned aircraft accidents, small UAS accident data will be made available to the public and the National Transportation Safety Board (NTSB).

Respondents: Approximately 35 per year.

Frequency: On occasion.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 8.75 hours.

Issued in Washington, DC, on March 25, 2020.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2020–06603 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0300]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: General Operating and Flight Rules—FAR 91

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The reporting and recordkeeping requirements of this collection are related to FAA rules governing the operation of aircraft (other than moored balloons, kites, rockets, unmanned free balloons, and small unmanned aircraft) within the United States. These reporting and recordkeeping requirements are necessary for the FAA to assure compliance with these provisions.

DATES: Written comments should be submitted by June 1, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket:
www.regulations.gov (Enter docket number into search field).

By mail: Dwayne C. Morris, 800 Independence Ave. SW, Washington, DC 20591.

By fax: (202) 267–1078.

FOR FURTHER INFORMATION CONTACT: John L. Drago by email at: *john.l.drago@faa.gov*; phone: (330) 648–3887.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0005.

Title: General Operating and Flight Rules—FAR 91.

Form Numbers: None.

Type of Review: Renewal.

Background: The reporting and recordkeeping requirements of Federal Aviation Regulation (FAR) part 91, General Operating and Flight Rules, are authorized by part A of subtitle VII of the revised title 49 of the United States Code. FAR part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets, unmanned free balloons and small unmanned aircraft) within the United States. The reporting and recordkeeping requirements prescribed by various sections of FAR part 91 are necessary for FAA to assure compliance with these provisions. The information collected becomes a part of FAA's official records and is used only by the FAA for certification, compliance and enforcement, and when accidents, incidents, reports of noncompliance, safety programs, or other circumstances require reference to records. Without this information, the FAA would be unable to control and maintain the consistently high level of civil aviation safety we enjoy.

Respondents: Approximately 21,200 airmen, state or local governments, and businesses.

Frequency: On occasion.

Estimated Average Burden per Response: 0.5 hours.

Estimated Total Annual Burden: Reporting: 10,729; Recordkeeping: 224,454; Total: 235,183 hours.

Issued in Washington, DC, on March 26, 2020.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2020–06656 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–13–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)—Extension of comment period.

SUMMARY: This notice extends the comment period for responding to this RFI for an additional 30-days. The full text of the original RFI follows: The Fixing America's Surface Transportation Act (FAST), 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. The Further Consolidated Appropriations Act, 2020 enacted on December 20, 2019 appropriated $5 million for this Program.

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.

SUPPLEMENTARY INFORMATION:

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.

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 [1] 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 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

[1] Codified as 23 U.S.C. 601–609.

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.

THIS NOTICE IS HEREBY AMENDED TO EXTEND THE RESPONSE DUE DATE BY ADDITIONAL 30 DAYS FROM THE ORGINAL DUE DATE AS STATED IN THE **DATES** SECTION ABOVE.

THIS AMENDMENT IS ISSUED IN WASHINGTON, DC, ON MARCH 23, 2020.

Morteza Farajian,

Executive Director.

[FR Doc. 2020–06596 Filed 3–30–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section for date(s) sanctions become effective.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Assistant Director for Licensing, tel.: 202–622–2480.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

On January 23, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Entities

1. BENEATHCO DMCC (a.k.a. BENEATHCO GENERAL TRADING DMCC), Unit No: 3O-01-1432, Jewellery and Gemplex 3, Plot No: DMCC-PH2-JandGPlexS, Jewellery and Gemplex, Dubai, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions [IRAN-EO13846] (Linked To: NATIONAL IRANIAN OIL COMPANY).

   Designated pursuant to section 1(a)(iii)(B) of Executive Order 13846 of August 6, 2018, 83 FR 38939, 3 CFR, 2019 Comp., p. 854 (E.O. 13846), for on or after November 5, 2018 having materially assisted, sponsored, or provided financial, material, or technological support for, or goods and services in support of, the NATIONAL IRANIAN OIL COMPANY, a person included on the SDN List whose property and interests in property are blocked pursuant to E.O. 13599.

2. PEAKVIEW INDUSTRY CO., LIMITED (a.k.a. PEAKVIEW INDUSTRY), Room 1105 Hua Qin International Bldg, 340 Queen's RD C, Sheung Wan, Hong Kong, Hong Kong; Shanghai, China; Additional Sanctions Information - Subject to Secondary Sanctions; National ID No. 2026419 (Hong Kong) [IRAN-EO13846] (Linked To: NATIONAL IRANIAN OIL COMPANY).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13846, for on or after November 5, 2018 having materially assisted, sponsored, or provided financial, material, or technological support for, or goods and services in support of, the NATIONAL IRANIAN OIL COMPANY, a person included on the SDN List whose property and interests in property are blocked pursuant to E.O. 13599.

3. SAGE ENERGY HK LIMITED, Hong Kong; Additional Sanctions Information - Subject to Secondary Sanctions; National ID No. 2767880 (Hong Kong) [IRAN-EO13846] (Linked To: NATIONAL IRANIAN OIL COMPANY).

   Designated pursuant to section 1(a)(iii)(B) of E.O. 13846, for on or after November 5, 2018 having materially assisted, sponsored, or provided financial, material, or technological support for, or goods and services in support of, the NATIONAL IRANIAN OIL

COMPANY, a person included on the SDN List whose property and interests in property are blocked pursuant to E.O. 13599.

4. TRILIANCE PETROCHEMICAL CO. LTD. (Chinese Traditional: 眾祥石化有限公司) (a.k.a. TIBA PARSIAN KISH PETROCHEMICAL; a.k.a. TIBA PETROCHEMICAL COMPANY DMCC; f.k.a. TRILIANCE KISH PETROCHEMICAL COMPANY; a.k.a. TRILIANCE PETROCHEMICAL CO LTD; a.k.a. TRILIANCE PETROCHEMICAL CO., LIMITED; a.k.a. TRILIANCE PETROCHEMICAL COMPANY; a.k.a. TRILIANCE PETROCHEMICAL GMBH; a.k.a. TRILIANCE PETROLEUM SHANGHAI CO., LTD (Chinese Simplified: 众祥石油 上海 有限公司)), 15/F Radio City, 505 Hennessy Rd, Causeway Bay, Hong Kong, Hong Kong; 3F-A, Tower 3 YouYou Century Plaza, 428 Yang Gao RD(S), Shanghai 200127, China (Chinese Simplified: 杨高南路 428 号由由世纪广场 3 号楼 3A, 上海 200127, China); Romischer Ring 11, Frankfurt am Main, Hessen 60326, Germany; Friedrich-Ebert-Anlage 36, Frankfurt am Main, Hessen 60325, Germany; No. 4, 5th Alley, Iran Zamin Street, Shahrak Gharb, Tehran, Tehran, Iran; Unit 301, 3rd Floor, Diplomat Commercial Office Complex, Sahel Street, Kish Island, Iran; Unit 1805, 18th Floor, Jumeirah Bay Tower X3, Cluster X, Plot JLT-PH2-X3A, Jumeirah Lake Towers, Dubai, Dubai, United Arab Emirates; Room 301-37, 3/F., Building 1, No. 38 Debao Road, Pilot Free Zone, Shanghai, China (Chinese Simplified: 德堡路 38 号 1 幢三层 301-37 室, 自由贸易试验区, 上海, China); Unit C, 10/F., Building No. 2, No. 428 Yanggao South Road, Pudong New Area, Shanghai, China (Chinese Simplified: 市浦东新区杨高南路 428 号 2 号楼 10 楼 C 座, 上海, China); Unit No: 15-PF-137, Detached Retail 15, Plot No: JLT-PH1-RET-I5, Jumeirah Lakes Towers, Dubai, United Arab Emirates; Additional Sanctions Information - Subject to Secondary Sanctions; Executive Order 13846 information: FOREIGN EXCHANGE. Sec. 5(a)(ii); alt. Executive Order 13846 information: BLOCKING PROPERTY AND INTERESTS IN PROPERTY. Sec. 5(a)(iv); alt. Executive Order 13846 information: BANKING TRANSACTIONS. Sec. 5(a)(iii); alt. Executive Order 13846 information: BAN ON INVESTMENT IN EQUITY OR DEBT OF SANCTIONED PERSON. Sec. 5(a)(v); alt. Executive Order 13846 information: IMPORT SANCTIONS. Sec. 5(a)(vi); alt. Executive Order 13846 information: SANCTIONS ON PRINCIPAL EXECUTIVE OFFICERS. Sec. 5(a)(vii); National ID No. 60313B106405 (Germany); alt. National ID No. 14004797459 (Iran); Commercial Registry Number 1831791 (Hong Kong); Company Number HRB 106405 (Germany); United Social Credit Code Certificate (USCCC) 91310000MA1K30UQ75 (China); Registration Number 310141000214539 (China) [IRAN-EO13846] (Linked To: NATIONAL IRANIAN OIL COMPANY).

Designated pursuant to section 1(a)(iii)(B) of E.O. 13846, for on or after November 5, 2018 having materially assisted, sponsored, or provided financial, material, or technological support for, or goods and services in support of, the NATIONAL IRANIAN OIL COMPANY, a person included on the SDN List whose property and interests in property are blocked pursuant to E.O. 13599.

Dated: March 26, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–06654 Filed 3–30–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one

or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See Supplementary Information section.

FOR FURTHER INFORMATION CONTACT:

OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

Notice of OFAC Actions

On August 28, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. AKHAEI, Shaghayegh (Arabic: شقایق اخایی) (a.k.a. AKHAEE, Shaghayegh; a.k.a. AKHAIEE, Shaghayegh; a.k.a. AKHAYEE, Shaghayegh); DOB 12 Mar 1988; alt. DOB 07 Mar 1988; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Female; National ID No. 0079221777 (Iran) (individual) [NPWMD] [IFSR] (Linked To: PISHTAZAN KAVOSH GOSTAR BOSHRA, LLC).

Designated pursuant to section 1(a)(iv) of Executive Order 13382 of June 28, 2005, "Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters" ("E.O. 13382"), for acting or purporting to act for or on behalf, directly or indirectly, PISHTAZAN KAVOSH GOSTAR BOSHRA, LLC, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. DEHGHAN, Hadi (Arabic: هادی دهقان); (a.k.a. CHENARI, Hadi Dehghan); DOB 21 Sep 1987; POB Yazd, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 4433648353 (individual) [NPWMD] [IFSR] (Linked To: RASTAFANN ERTEBAT ENGINEERING COMPANY).

Designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, RASTAFANN ERTEBAT ENGINEERING COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. DEHGHAN, Hamed (Arabic: حامد دهقان) (a.k.a. CHENARI, Hamed Ahmad Ali Dehghan), Unit 17, Building number 48, Metro Area of Pars Tehran, East Resalat, Iran; DOB 1984; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 4432874473 (Iran) (individual) [NPWMD] [IFSR] (Linked To: RASTAFANN ERTEBAT ENGINEERING COMPANY).

Designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, RASTAFANN ERTEBAT ENGINEERING COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. EBRAHIMZADEH, Mahdi (a.k.a. ARDAKANI, Mehdi Hosein Ebrahimzadeh); DOB 1985; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 4449759990 (Iran) (individual) [NPWMD] [IFSR] (Linked To: DEHGHAN, Hamed).

Designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, HAMED DEHGHAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. SHARIAT, Seyed Hossein (a.k.a. SHARIAT, Hossein); DOB 20 Apr 1974; POB Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport P37695914 (Iran) expires 27 Jun 2021 (individual) [NPWMD] (Linked To: ASRE SANAT ESHRAGH COMPANY).

Designated pursuant to section 1(a)(iv) of Executive Order 13382, for acting or purporting to act for or on behalf, directly or indirectly, ASRE SANAT ESHRAGH COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Entities

1. ASRE SANAT ESHRAGH COMPANY (a.k.a. ASR-E SANAT ESHRAGH; a.k.a. ASRE SANAT ESHRAGH CO.; a.k.a. ASRE SANATE ESHRAGH CO.; a.k.a. ASR-E-SAN'AT ESHRAGH ENGINEERING COMPANY; a.k.a. ASR-E-SAN'AT ESHRAGH ENGINEERING COMPANY LTD.; a.k.a. "ASE CO."), U6, No. 1 Gol Alley, N. Makran St., Vafamanesh Ave., Heravy Sq., Tehran 1668745517, Iran; No. 699 Farjam St., Tehran, Iran; Website www.asealu.com; Additional Sanctions Information - Subject to Secondary Sanctions [NPWMD] [IFSR] (Linked To: IRAN ELECTRONICS INDUSTRIES).

Designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, IRAN ELECTRONICS INDUSTRIES, a person whose property and interests in property are blocked pursuant to E.O. 13382.

2. EBTEKAR SANAT ILYA LLC (Arabic: ابتکار صنعت ایلیا) (a.k.a. EBTEKAR SANAT ELYA; a.k.a. EBTEKAR SANAT ILIA; a.k.a. EBTEKAR SANAT ILIYA; a.k.a. EBTEKAR SANAT ILIYA COMPANY; a.k.a. EBTEKAR SANAT ILYA CO. LTD.), Apt. No. 10, Bldg. No. 517, between Khavar and Valiasr Crossroads, Farjam Ave, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; National ID No. 10320636846; Registration Number 412225 [NPWMD] [IFSR] (Linked To: DEHGHAN, Hamed; Linked To: RASTAFANN ERTEBAT ENGINEERING COMPANY).

Designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by HAMED DEHGHAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, RASTAFANN ERTEBAT ENGINEERING COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13382.

3. GREEN INDUSTRIES HONG KONG LIMITED (a.k.a. GREEN INDUSTRIES, LTD), 2/F, Green 18, Phase 2, Hong Kong Science Park, Pak Shek Kok, NT, Hong Kong; Flat A10, 8/F, Hung Fuk Factory Building, 60 Hung To Road, Kwun Tong, Hong Kong; Unit D, 16/F, One Capital Place, 18 Luard Road, Wan Chai, Hong Kong; Additional Sanctions Information - Subject to Secondary Sanctions; C.R. No. 2147089 [NPWMD] [IFSR] (Linked To: DEHGHAN, Hamed).

Designated pursuant to section 1(a)(iii) of E.O. 13382, for having provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, HAMED DEHGHAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

4. PISHTAZAN KAVOSH GOSTAR BOSHRA, LLC (Arabic: پیشتازان کاوش گستر بشرا) (a.k.a. KAVOSH GOSTAR BOSHRA LLC; a.k.a. PISHTAZAN KAVOSH GOSTAR BASHARA LLC; a.k.a. PISHTAZAN KAVOSH GOSTAR BUSHRA COMPANY, LLC; a.k.a. PISHTAZAN KAVOSH GOSTAR BUSHRA LLC; a.k.a. "PKGB"), One Khanjari Alley, Second Floor, Unit 4, postal code 1685914195, Iran; Room 04, F2, No. 1 (Bank Shahr Building), Khanjari Alley, Farjam Street, Tehran, Iran; Unit 4, Number 1, Khanjari Alley, between Shahid Bagheri Highway and Seraj, Farjam Avenue, Tehran, Iran; Number 1, Unit 4, Farjam Street, between Saraj Intersection and Shaheed Bahjeri Highway and Khanjari Alley, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Registration Number 428840 [NPWMD] [IFSR] (Linked To: DEHGHAN, Hamed).

Designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by HAMED DEHGHAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

5. SHAFAGH SENOBAR YAZD COMPANY LIMITED (a.k.a. SHAFAGH SANUBAR YAZD COMPANY; a.k.a. SHAFAGH SENOBAR COMPANY; a.k.a. SHAFAGH SENOBAR YAZD CO. LTD; a.k.a. SHAFAGH SENOWBAR YAZD CO.), F3, No. 6, Abdollahi Jonoobi Alley, Ashkestanpour Jonoobi Alley, Andarzgoo Blvd, Farmanye, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions [NPWMD] [IFSR] (Linked To: DEHGHAN, Hamed).

Designated pursuant to section 1(a)(iv) of E.O. 13382, for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, HAMED DEHGHAN, a person whose property and interests in property are blocked pursuant to E.O. 13382.

Dated: March 26, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–06653 Filed 3–30–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8874–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8874–A, Notice of Qualified Equity Investment for New Markets Credit.

DATES: Written comments should be received on or before June 1, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke at (202)317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Qualified Equity Investment for New Markets Credit.

OMB Number: 1545–2065.

Form Number: 8874–A.

Abstract: CDEs must provide notice to any taxpayer who acquires a qualified equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets credit. Form 8874–A is used to make the notification as required under section 1.45D–1(g)(2)(i)(A).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individual or households, Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 5 hours and 26 minutes.

Estimated Total Annual Burden Hours: 2,715.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including using automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 2020.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2020–06657 Filed 3–30–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8857 and 8857(SP)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Forms 8857 and 8857(SP), Request for Innocent Spouse Relief.

DATES: Written comments should be received on or before June 1, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202)317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Innocent Spouse Relief.

OMB Number: 1545–1596.

Form Numbers: 8857 and 8857(SP).

Abstract: Section 6013(e) of the Internal Revenue Code allows taxpayers to request, and IRS to grant, ''innocent spouse'' relief when: The taxpayer files a joint return with tax substantially understated; the taxpayer establishes no knowledge of, or benefit from, the understatement; and it would be inequitable to hold the taxpayer liable. Forms 8857 and 8857(SP) is used to request relief from liability of an understatement of tax on a joint return resulting from a grossly erroneous item attributable to the spouse.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 6 hours, 32 minutes.

Estimated Total Annual Burden Hours: 316,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 2020.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2020–06651 Filed 3–30–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–NA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 706–NA, U.S. Estate (and Generation-Skipping Transfer) Tax Return.

DATES: Written comments should be received on or before June 1, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Estate (and Generation-Skipping Transfer) Tax Return.

OMB Number: 1545–0531.

Form Number: 706–NA.

Abstract: Form 706–NA is used to compute estate and generation-skipping transfer tax liability for nonresident alien decedents in accordance with section 6018 of the Internal Revenue Code. IRS uses the information on the form to determine the correct amount of tax and credits.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 800

Estimated Time per Respondent: 4 hours, 29 minutes.

Estimated Total Annual Burden Hours: 3,584.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 25, 2020.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2020–06595 Filed 3–30–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulation Agency Protests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before April 30, 2020 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Departmental Offices (DO)

Title: Regulation Agency Protests.

OMB Control Number: 1505–0107.

Type of Review: Extension without change of a currently approved collection.

Description: Information is requested of contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file protests.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: Five.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: Five.

Estimated Time per Response: Two hours.

Estimated Total Annual Burden Hours: Ten.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 26, 2020.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2020–06643 Filed 3–30–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before April 30, 2020 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Gasoline Excise Tax and Gasohol; Compressed Natural Gas—TD 8609.

OMB Control Number: 1545–1270.

Type of Review: Extension without change of a currently approved collection.

Description: TD 8421 contains final regulations under Internal Revenue Code sections 4081 and 4082, relating to the federal excise tax on gasoline. It affects refiners, importers, and distributors of gasoline and provides guidance relating to taxable transactions, persons liable for tax, gasoline blendstocks, and gasohol. TD 8609 contains final regulations relating to gasohol blending and the tax on compressed natural gas (CNG). The sections relating to gasohol blending affect certain blenders, enterers, refiners, and throughputters. The sections relating to CNG affect persons that sell or buy CNG for use as a fuel in a motor vehicle or motorboat.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 3,410.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 3,410.

Estimated Time per Response: 7 minutes.

Estimated Total Annual Burden Hours: 366.

2. Title: Election Out of Subchapter K for Producers of Natural Gas.

OMB Control Number: 1545–1338.

Type of Review: Extension without change of a currently approved collection.

Description: This regulation contains certain requirements that must be met by co-producers of natural gas subject to a joint operating agreement in order to elect out of subchapter K of chapter 1 of the Internal Revenue Code. Under section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements on the regulation's effective date are to file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two new permissible accounting methods in the regulations.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 10.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 5.

3. Title: Information Reporting for Qualified Tuition and Related Expenses.

OMB Control Number: 1545–1574.

Type of Review: Extension without change of a currently approved collection.

Description: Section 6050S of the Internal Revenue Code requires eligible education institutions to report certain information regarding tuition payments to the IRS and to students. Form 1098–T has been developed to meet this requirement.

Form: 1098–T.

Affected Public: Businesses or other for-profits, Not-for-profit Institutions.

Estimated Number of Respondents: 7,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 25,973,000.

Estimated Time per Response: 13 minutes.

Estimated Total Annual Burden Hours: 5,973,790.

4. Title: Election to Treat Trust as Part of an Estate—REG–106542–98 (TD 9032).

OMB Control Number: 1545–1578.

Type of Review: Extension without change of a currently approved collection.

Description: REG–106542–98 (TD 9032) and Rev. Proc. 98–13 relate to an election to have certain revocable trusts treated and taxed as part of an estate, and provides the procedures and requirements for making the section 645 election.

Form: None.

Affected Public: Individuals and households.

Estimated Number of Respondents: 10,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 10,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 5,000.

5. Title: Exception from the information reporting requirements in § 6045(e).

OMB Control Number: 1545–1592.

Type of Review: Extension without change of a currently approved collection.

Description: This revenue procedure 2007–12, provides the written assurances that are acceptable to the Service for exempting a real estate reporting person from information reporting requirements for the sale of a principal residence under section 6045(e)5) of the Internal Revenue Code.

Form: None.

Affected Public: Individuals and households.

Estimated Number of Respondents: 2,390,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 2,300,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 420,500.

6. Title: Handbook for Authorized IRS e-file Providers.

OMB Control Number: 1545–1708.

Type of Review: Extension without change of a currently approved collection.

Description: Publication 1345 provides important information for Authorized IRS e-file Providers of Individual Income Tax Returns, including information regarding return submission, record keeping requirements, payment options, and refunds.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 200,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 129,655,713.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 6,023,762.

7. Title: Extraterritorial Income Exclusion (Form 8873).

OMB Control Number: 1545–1722.

Type of Review: Extension without change of a currently approved collection.

Description: A taxpayer uses Form 8873 to claim the gross income exclusion provided for by section 114 of the Internal Revenue Code.

Form: 8873.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 750,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 750,000.

Estimated Time per Response: 25 hours 27 minutes.

Estimated Total Annual Burden Hours: 19,087,500.

8. Title: Electronic Payee Statements.

OMB Control Number: 1545–1729.

Type of Review: Extension without change of a currently approved collection.

Description: In general, under these regulations, a person required to furnish a statement on Form W–2 under Code sections 6041(d) or 6051, or Forms 1098–T or 1098–E under Code section 6050S, may furnish these statements electronically if the recipient consents to receive them electronically, and if the person furnishing the statement (1) makes certain disclosures to the recipient, (2) annually notifies the recipient that the statement is available on a website, and (3) provides access to the statement on that website for a prescribed period of time.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 15,200.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 28,449,495.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 2,844,950.

9. Title: Manner of making election to terminate tax-exempt bond financing.

OMB Control Number: 1545–1730.

Type of Review: Extension without change of a currently approved collection.

Description: Section 142(f)(4) of the Internal Revenue Code of 1986 permits a person engaged in the local furnishing of electric energy or gas that uses facilities financed with exempt facility bonds under section 142(a)(8) and that expands it service area in a manner inconsistent with the requirements of sections 142(a)(8) and 142(f) to make an election to ensure that those bonds will continue to be treated as tax-exempt bonds. The final regulations (1.142(f)-1) set forth the required time and manner of making this statutory election.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 15.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 15.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 15.

10. Title: Form 720–CS, Carrier Summary Report, Form 720–TO, Terminal Operator Report, and Form 8809–EX, Request for Extension of Time to File an ExSTARS Information Return.

OMB Control Number: 1545–1733.

Type of Review: Extension without change of a currently approved collection.

Description: Representatives of the motor fuel industry, state governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effort has resulted in a system to track the movement of all products to and from terminals. Form 720–CS is an information return that will be used by carriers to report their monthly deliveries and receipts of products to and from terminals. Form 720–TO is completed by bulk transport carriers (barges, vessels, and pipeline) who deliver fuel product to the terminals. Form 8809–EX is used to request a 30-day extension of time to file an Excise Summary terminal Activity Reporting System (ExSTARS) information report (Form 720CS, Carrier Summary Report or Form 720TO, Terminal operator Report).

Form: 720–CS, 720–TO, 8809–EX.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 544,380.

Frequency of Response: Monthly, On occasion.

Estimated Total Number of Annual Responses: 544,380.

Estimated Time per Response: 4 hours 39 minutes.

Estimated Total Annual Burden Hours: 2,530,383.

11. Title: Form 720–TO—Terminal Operator Report.

OMB Control Number: 1545–1734.

Type of Review: Extension without change of a currently approved collection.

Description: Representatives of the motor fuel industry, state governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effort has resulted in a system to track the movement of all products to and from terminals. Form 720–TO is an information return that will be used by terminal operators to report their monthly receipts and disbursements of products.

Form: 720–TO.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,500.

Frequency of Response: Monthly.

Estimated Total Number of Annual Responses: 504,000.

Estimated Time per Response: 4 hours 39 minutes.

Estimated Total Annual Burden Hours: 2,347,020.

12. Title: Health Insurance Costs of Eligible Individuals for (HCTC).

OMB Control Number: 1545–1875.

Type of Review: Extension without change of a currently approved collection.

Description: Revenue Procedure 2004–12 informs states how to elect a health program to be qualified health insurance for purposes of the health coverage tax credit (HCTC) under section 35 of the Internal Revenue Code. The collection of information is voluntary. However, if a state does not make an election, eligible residents of the state may be impeded in their efforts to claim the HCTC.

Form: None.

Affected Public: State, Local and Tribal Governments.

Estimated Number of Respondents: 51.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 51.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 26.

13. Title: Average Area Purchase Price Safe Harbors and Nationwide Purchase Prices under section 143.

OMB Control Number: 1545–1877.

Type of Review: Extension without change of a currently approved collection.

Description: The revenue procedure under this collection provides issuers of qualified mortgage bonds, as defined in section 143(a) of the Internal Revenue Code (Code), and issuers of mortgage credit certificates, as defined in section 25(c), with (1) the nationwide average purchase price for residences located in the United States, and (2) average area purchase price safe harbors for residences located in statistical areas in each state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, the Virgin Islands, and Guam.

Form: None.

Affected Public: State, Local and Tribal Governments.

Estimated Number of Respondents: 60.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 60.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 15 hours.

14. Title: Form 8908—Energy Efficient Home Credit.

OMB Control Number: 1545–1979.

Type of Review: Extension without change of a currently approved collection.

Description: Eligible contractors will use Form 8908 to claim the credit for new energy efficient homes that are acquired by sale or lease by an individual from that contractor during the tax year for use as a residence.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 198,000.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 198,000.

Estimated Time per Response: 2 hours 36 minutes.

Estimated Total Annual Burden Hours: 512,820.

15. Title: Rules for Certain Rental Real Estate Activities.

OMB Control Number: 1545–2194.

Type of Review: Extension without change of a currently approved collection.

Description: This Revenue Procedure grants relief under Section 1.469–9(g) for certain taxpayers to make late elections to treat all interests in rental real estate as a single rental real estate activity.

Form: None.

Affected Public: Individuals and households.

Estimated Number of Respondents: 2,000.

Frequency of Response: Once, Annually.

Estimated Total Number of Annual Responses: 1,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

16. Title: Form 14242—Reporting Abusive Tax Promotions or Preparer's, & Form 14242 (SP)—Informe las Presuntas Promociones de Planes.

OMB Control Number: 1545–2219.

Type of Review: Extension without change of a currently approved collection.

Description: Form 14242 and Form 14242 (SP) are both used to report an abusive tax avoidance scheme and tax return preparers who promote such schemes (Form 14242 (SP) is the Spanish translation of Form 14242). The information is collected to combat abusive tax promoters. Respondents can be individuals, businesses and tax return preparers.

Form: 14242, 14242 (SP).

Affected Public: Individuals and households.

Estimated Number of Respondents: 460.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 460.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 77 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 26, 2020.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2020–06684 Filed 3–30–20; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 85 Tuesday,
No. 62 March 31, 2020

Part II

Securities and Exchange Commission

17 CFR Parts 227, 229, 230, et al.
Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 227, 229, 230, 239, 249, 270, and 274

[Release Nos. 33–10763; 34–88321; File No. S7–05–20]

RIN 3235–AM27

Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to facilitate capital formation and increase opportunities for investors by expanding access to capital for entrepreneurs across the United States. Specifically, the proposed amendments would simplify, harmonize, and improve certain aspects of the exempt offering framework to promote capital formation while preserving or enhancing important investor protections. Over the years, and particularly since Congress passed the Jumpstart Our Business Startups Act of 2012, the Commission has introduced, expanded, or otherwise revised a number of exemptions from registration. The proposed amendments seek to address gaps and complexities in the exempt offering framework that may impede access to investment opportunities for investors and access to capital for issuers.

DATES: Comments should be received on or before June 1, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–05–20 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–05–20. 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 of submission. The Commission will post all comments on the Commission's website (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 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: Anthony Barone or John Byrne, Special Counsel, Office of Small Business Policy, or Steven G. Hearne, Senior Special Counsel, Office of Rulemaking, at (202) 551–3460, Division of Corporation Finance; Lawrence Pace or Benjamin Kalish, Senior Counsel, at (202) 551–6792, Division of Investment Management; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing to amend or add the following rules and forms:

Commission reference	CFR citation (17 CFR)
Regulation Crowdfunding:	
Rule 100 through 503	§§ 227.100 through 227.503.
Rule 100	§ 227.100.
Rule 201	§ 227.201.
Rule 204	§ 227.204.
Rule 206	§ 227.206.
Rule 503	§ 227.503.
Securities Act of 1933 (Securities Act):[1]	
Rule 147	§ 230.147.
Rule 147A	§ 230.147A.
Rule 148	§ 230.148.
Rule 152	§ 230.152.
Rule 155	§ 230.155.
Rule 241	§ 230.241.
Regulation A:	
Rule 251 through 263	§§ 230.251 through 230.263.
Rule 251	§ 230.251.
Rule 255	§ 230.255.
Rule 259	§ 230.259.
Rule 262	§ 230.262.
Regulation D:	
Rule 501 through 508	§§ 230.501 through 230.508.
Rule 502	§ 230.502.
Rule 504	§ 230.504.
Rule 506	§ 230.506.
Regulation S:	
Rule 901 through 905	§§ 230.901 through 230.905.
Rule 902	§ 230.902.
Rule 906	§ 230.906.
Regulation S–K:	
Item 10 through 1305	§§ 229.10 through 229.1305.
Item 601	§ 229.601.
Form S–6	§ 239.16.
Form N–14	§ 239.23.
Form 1–A	§ 239.90.
Form C	§ 239.900.
Securities Exchange Act of 1934 (Exchange Act):[2]	
Form 20–F	§ 249.200f.
Form 8–K	§ 249.308.
Investment Company Act of 1940 (Investment Company Act):[3]	
Rule 3a–9	§ 270.3a–9.
Form N–8B–2	§ 274.12.
Securities Act and Investment Company Act:	
Form N–1A	§§ 239.15A and 274.11A.
Form N–2	§§ 239.14 and 274.11a–1.
Form N–3	§§ 239.17a and 274.11b.
Form N–4	§§ 239.17b and 274.11c.
Form N–5	§§ 239.24 and 274.5.
Form N–6	§§ 239.17c and 274.11d.

Table of Contents

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 80a–1 *et seq.*

I. Introduction

A. Background

The Securities Act requires that every offer [4] and sale of securities be registered with the Securities and Exchange Commission (the ''Commission''), unless an exemption from registration is available. In various circumstances, registration is not necessary, nor is it the most effective means, to achieve the objectives of the Securities Act or the Commission's mission more broadly. In recognition of the fact that registration is not always necessary or appropriate, the Securities Act contains a number of exemptions from its registration requirement and the Commission is authorized to adopt additional exemptions. As an example, emerging companies—from early-stage start-ups seeking seed capital to companies that are on a path to become a public reporting company—may use the exempt offering rules to access critical capital needed to grow and scale. Our dynamic markets benefit from a robust pipeline of new companies—supported by the exempt offering framework—that can one day join the public markets. The exempt offering framework also supports the capital needs of many small and medium-sized companies that contribute substantially to our economy but that are unlikely to become public companies due to their size, the nature of their capital needs, or other factors.

The scope of exempt offerings has evolved over time through Commission rules and legislative changes. Significantly, the Jumpstart Our Business Startups Act of 2012 (''JOBS Act'') greatly expanded the options to raise capital in exempt offerings.[5] Since then, the Fixing America's Surface Transportation Act of 2015 (the ''FAST Act'') [6] and the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (the ''Economic Growth Act'') [7] resulted in further expansions of, and revisions to, many of our exemptions.[8] The current exempt offering framework is complex and made up of differing requirements and conditions, which may be confusing and difficult for issuers, who bear the burden of demonstrating the availability of any exemption,[9] to navigate. Smaller companies, which may be more likely to rely on these exemptions given the initial and ongoing costs associated with conducting a registered offering and becoming a reporting company, may find the framework particularly difficult to navigate given their more limited resources.[10]

On June 18, 2019, the Commission issued a concept release that solicited public comment on possible ways to simplify, harmonize, and improve the exempt offering framework under the Securities Act to promote capital formation and expand investment opportunities while maintaining appropriate investor protections.[11] In the Concept Release, the Commission noted that the regulatory framework for exempt offerings has evolved, and the significance of the exempt securities markets has increased both in terms of the absolute amounts raised and relative to the public registered markets. In 2019, registered offerings accounted for $1.2 trillion (30.8 percent) of new capital, compared to approximately $2.7 trillion (69.2 percent) that we estimate was raised through exempt offerings.[12] Of the approximately $2.7 trillion estimated as raised in exempt offerings in 2019, Table 1 shows the amounts that we estimate were raised under each of the identified exemptions.[13]

[4] *See* 15 U.S.C. 77b(a)(3) (noting that an offer includes every attempt to dispose of a security or interest in a security, for value; or any solicitation of an offer to buy a security or interest in a security).

[5] Public Law 112–106, 126 Stat. 306 (2012). The JOBS Act, among other things: (1) Directed the Commission to revise Rule 506 to eliminate the prohibition against general solicitation or general advertising for offers and sales of securities to accredited investors (*See* Section 201(a)(1)); (2) added Section 4(a)(6) [15 U.S.C. 77d(a)(6)] and Section 4A [15 U.S.C. 77d–1(b)] to the Securities Act and directed the Commission to issue rules to permit certain crowdfunding offerings (*See* Section 302); and (3) directed the Commission to expand Regulation A (*See* Section 401).

[6] Public Law 114–94, 129 Stat. 1312 (2015).

[7] Public Law 115–174, 132 Stat. 1296 (2018).

[8] The FAST Act added Section 4(a)(7) to the Securities Act [15 U.S.C. 77d(a)(7)], providing a new exemption for private resales of securities. *See* Section 76001. Among other changes, the Economic Growth Act required the Commission to amend Regulation A to permit entities subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act to use the exemption. *See* Section 508.

[9] *See SEC* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953) (''Keeping in mind the broadly remedial purposes of federal securities legislation, imposition of the burden of proof on an issuer who would plead the exemption seems to us fair and reasonable.'').

[10] *See, e.g.,* comments of Sara Hanks, CEO, CrowdCheck, at the 38th Annual SEC Government-Business Forum on Small Business Capital Formation (Aug. 14, 2019), *available at https://www.sec.gov/files/2019-sec-government-business-forum-small-business-capital-formation-transcript.pdf,* transcript at 132–135.

[11] Concept Release on Harmonization of Securities Offering Exemptions, Release No. 33–10649 (June 18, 2019) [84 FR 30460 (June 26, 2019)] (''Concept Release'').

[12] Unless otherwise indicated, information in this release on Regulation D, Regulation A, and Regulation Crowdfunding offerings is based on analyses by staff in the Commission's Division of Economic Risk and Analysis (''DERA'') of data collected from SEC filings. *See* Concept Release, at Section II.

[13] ''Other exempt offerings'' includes Section 4(a)(2), Regulation S, and Rule 144A offerings. The data used to estimate the amounts raised in 2019 for other exempt offerings includes: (1) Offerings under Section 4(a)(2) of the Securities Act that were collected from Thomson Financial's SDC Platinum, which uses information from underwriters, issuer websites, and issuer Commission filings to compile its Private Issues database; (2) offerings under Regulation S that were collected from Thomson Financial's SDC Platinum service; and (3) resale offerings under Rule 144A that were collected from Thomson Financial SDC New Issues database, Dealogic, the Mergent database, and the Asset-Backed Alert and Commercial Mortgage Alert publications, to further estimate the exempt offerings under Section 4(a)(2) and Regulation S. We include amounts sold in Rule 144A resale offerings because those securities are typically issued initially in a transaction under Section 4(a)(2) or Regulation S but generally are not included in the Section 4(a)(2) or Regulation S data identified above. These numbers are accurate only to the extent that these databases are able to collect such information and may understate the actual amount of capital raised under these offerings if issuers and underwriters do not make this data available. The data on Rule 144A debt offerings from Mergent is available only through the end of August 2019. We have extrapolated the data to obtain a full calendar year.

TABLE 1—OVERVIEW OF AMOUNTS RAISED IN THE EXEMPT MARKET IN 2019

Exemption	Amounts reported or estimated as raised in 2019 ($ billion)
Rule 506(b) of Regulation D	$1,492
Rule 506(c) of Regulation D	66
Regulation A: Tier 1	0.044
Regulation A: Tier 2	0.998
Rule 504 of Regulation D	0.228
Regulation Crowdfunding	0.062
Other exempt offerings	1,167

The Commission requested comment on several possible approaches to amend the framework as a whole and to improve specific provisions of the existing exemptions.[14] While commenters voiced many perspectives on what changes would best serve the interests of emerging companies raising capital, as well as small and medium sized companies more generally, and the investors in those companies, a consistent theme in their comments was that many elements of the current structure work effectively and a major restructuring is not needed.[15] Many commenters suggested improvements to the less frequently used capital raising pathways to improve their efficacy.[16] Based on the comments received on the Concept Release, as well as other input from market participants,[17] we are proposing a set of amendments that would generally retain the current exempt offering structure and reduce potential friction points identified by commenters, which together are intended to facilitate capital formation while preserving and in some cases enhancing investor protections. We believe that these amendments would address gaps and complexities in the exempt offering framework and help provide viable alternatives to the dominant capital raising tools, such as offerings to accredited investors under Rule 506(b) of Regulation D, benefiting issuers and investors by creating an offering framework that is more consistent, transparent, and manageable, and that reflects the evolving capital needs of our markets.

We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposed rule amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

B. Overview of Current Exemptions

The Securities Act contains a number of exemptions from its registration requirements and authorizes the Commission to adopt additional exemptions. Most of these exemptions are based on characteristics of the securities themselves, though some exempted securities are identified based on the transaction in which they are offered or sold.[18] Section 4 of the Securities Act identifies transactions that are exempt from the registration requirements.[19] In addition, Section 28 of the Securities Act, which was added by the National Securities Markets Improvement Act of 1996 (''NSMIA''),[20] further authorizes the Commission to exempt other persons, securities, or transactions to the extent ''necessary or appropriate in the public interest [and] consistent with the protection of investors.'' [21]

Table 2 summarizes some of the characteristics of the most commonly used exemptions [22] from registration.[23]

TABLE 2—OVERVIEW OF CAPITAL-RAISING EXEMPTIONS

Type of offering	Offering limit within 12-month period	General solicitation	Issuer requirements	Investor requirements	SEC filing requirements	Restrictions on resale	Preemption of state registration and qualification
Section 4(a)(2)	None	No	None	Transactions by an issuer not involving any public offering. *See SEC* v. *Ralston Purina Co.*	None	Yes. Restricted securities.	No.
Rule 506(b) of Regulation D.	None	No	''Bad actor'' disqualifications apply.	Unlimited accredited investors. Up to 35 sophisticated but non-accredited investors.	Form D	Yes. Restricted securities.	Yes.

[14] Unless otherwise indicated, comments cited in this release are to comment letters received in response to the Concept Release, which are *available at https://www.sec.gov/comments/s7-08-19/s70819.htm.*

[15] *See, e.g.,* letter from AngelList Advisors, LLC dated September 25, 2019 (''AngelList Letter'') (generally supporting the exempt offering framework); letter from CrowdCheck, Inc. dated October 30, 2019 (''CrowdCheck Letter'') (generally supporting Regulation A and Regulation Crowdfunding); and letter from Crowdfund Capital Advisors dated September 24, 2019 (''CCA Letter'') (generally supporting Regulation Crowdfunding). *See also* Recommendation of the SEC Small Business Capital Formation Advisory Committee regarding the exemptive offering framework (Dec. 13, 2019), *available at https://www.sec.gov/spotlight/sbcfac/recommendation-harmonization-general-principles.pdf* (''2019 Small Business Advisory Committee Recommendation on the Exemptive Offering Framework'') (stating that ''[t]he elements of the current exempt offering framework that are functioning well should be maintained, and therefore, the Commission should 'do no harm' to Rule 506(b) of Regulation D''); and Report of the 2019 SEC Government-Business Forum on Small Business Capital Formation (Dec. 2019), *available at https://www.sec.gov/files/small-business-forum-report-2019.pdf* (''2019 Forum Report''), at 4 (noting that panelists discussed the importance of maintaining the elements of the exempt framework that are functioning well for marketplace participants, such as the private placement exemption and Rule 506(b) safe harbor), and at 30 (quoting panelist Bart Dillashaw: ''don't mess with 506(b) because there is this venture, angel, private investment role that seems to work pretty well, and certainly a lot of money is raised on it'').

[16] *See, e.g.,* comment letters discussed in Sections II.B.3, II.D.3.c, II.F and II.G.

[17] *See, e.g.,* 2019 Forum Report (recommending that the Commission improve clarity and education through, among other things, the use of ''consistent terms in exempt offering rules for ease of understanding'' and ''bright line rules and examples to provide clarity for investors, small businesses, and lawyers''); and 2019 Small Business Advisory Committee Recommendation on the Exemptive Offering Framework (recommending that the exempt framework should be amended to make it less complex for small businesses to raise capital).

[18] For example, Section 3(b)(1) of the Securities Act authorizes the Commission to exempt certain issues of securities where the aggregate amount offered does not exceed $5 million to the extent that ''the enforcement of this title with respect to such securities is not necessary in the public interest and for the protection of investors by reason of the small amount involved or the limited character of the public offering.'' 15 U.S.C. 77c(b)(1).

[19] 15 U.S.C. 77d.

[20] Public Law 104–290, 110 Stat. 3416 (Oct. 11, 1996).

[21] 15 U.S.C. 77z–3.

[22] Commission rules also provide exemptions for certain offerings where the purpose of the offering is other than to raise capital. For example, 17 CFR 230.701 (''Rule 701'') exempts certain sales of securities made to compensate employees, consultants, and advisors.

[23] Generally, Table 2 is organized by typical offering size from largest to smallest. The information in this table is not comprehensive and is intended only to highlight some of the more significant aspects of the current rules. Certain regulatory exemptions from registration are based on statutory provisions, but provide specific frameworks or safe harbors to comply with the statutory exemptions. For example, Rule 506(b) provides a safe harbor to comply with the exemption under Section 4(a)(2) [15 U.S.C. 77d(a)(2)], and Rule 147 provides a safe harbor under Section 3(a)(11) [15 U.S.C. 77c(a)(11)]. An issuer may choose not to avail itself of one of these specific regulatory exemptions and instead conduct an offering pursuant to the statutory exemption itself, such as Section 4(a)(2), following principles-based requirements that have been developed over time.

TABLE 2—OVERVIEW OF CAPITAL-RAISING EXEMPTIONS—Continued

Type of offering	Offering limit within 12-month period	General solicitation	Issuer requirements	Investor requirements	SEC filing requirements	Restrictions on resale	Preemption of state registration and qualification
Rule 506(c) of Regulation D.	None	Yes	"Bad actor" disqualifications apply.	Unlimited accredited investors. Issuer must take reasonable steps to verify that all purchasers are accredited investors.	Form D	Yes. Restricted securities.	Yes.
Regulation A: Tier 1	$20 million	Permitted; before qualification, testing-the-waters permitted before and after the offering statement is filed.	U.S. or Canadian issuers. Excludes blank check companies,* registered investment companies, business development companies, issuers of certain securities, and certain issuers subject to a Section 12(j) order. "Bad actor" disqualifications apply. No asset-backed securities.	None	Form 1-A, including two years of financial statements. Exit report.	No	No.
Regulation A: Tier 2	$50 million			Non-accredited investors are subject to investment limits based on the greater of annual income and net worth, unless securities will be listed on a national securities exchange.	Form 1-A, including two years of audited financial statements. Annual, semi-annual, current, and exit reports.	No	Yes.
Rule 504 of Regulation D.	$5 million	Permitted in limited circumstances.	Excludes blank check companies, Exchange Act reporting companies, and investment companies. "Bad actor" disqualifications apply.	None	Form D	Yes. Restricted securities except in limited circumstances.	No.
Regulation Crowdfunding; Section 4(a)(6).	$1.07 million	Permitted with limits on advertising after Form C is filed. Offering must be conducted on an internet platform through a registered intermediary.	Excludes non-U.S. issuers, blank check companies, Exchange Act reporting companies, and investment companies. "Bad actor" disqualifications apply.	Investment limits based on the lesser of annual income and net worth.	Form C, including two years of financial statements that are certified, reviewed or audited, as required. Progress and annual reports.	12-month resale limitations.	Yes.
Intrastate: Section 3(a)(11).	No federal limit (generally, individual state limits between $1 and $5 million).	Offerees must be in-state residents.	In-state residents "doing business" and incorporated in-state; excludes registered investment companies.	Offerees and purchasers must be in-state residents.	None	Securities must come to rest with in-state residents.	No.
Intrastate: Rule 147	No federal limit (generally, individual state limits between $1 and $5 million).	Offerees must be in-state residents.	In-state residents "doing business" and incorporated in-state; excludes registered investment companies.	Offerees and purchasers must be in-state residents.	None	Yes. Resales must be within state for six months.	No.
Intrastate: Rule 147A	No federal limit (generally, individual state limits between $1 and $5 million).	Yes	In-state residents and "doing business" in-state; excludes registered investment companies.	Purchasers must be in-state residents.	None	Yes. Resales must be within state for six months.	No.

* While the exemptions identified here as excluding blank check companies do not use the term "blank check company," they exclude development stage issuers that have no specific business plan or purpose or have indicated that their business plan is to engage in a merger or acquisition with an unidentified company or companies, which is substantially similar to the definition of blank check company in Securities Act Rule 419, used elsewhere in Commission rules. *See* 17 CFR 230.419.

As Table 2 illustrates, the current exemptions impose a variety of conditions designed to protect investors, including both initial investors and those purchasing securities in the secondary market.[24] Exemptions tend to incorporate more investor protection measures where non-accredited or less sophisticated investors are permitted to participate in the offering.

[24] Resales of securities issued in unregistered offerings are required to be registered under the Securities Act when no exemption from registration is available. When resale registration occurs, purchasers in the secondary market receive the disclosure and other benefits that accompany registration. In certain cases, including offers and sales pursuant to the Rule 144 safe harbor under Securities Act Section 4(a)(1), resales do not require registration. A key premise of the Rule 144 safe harbor is that once a restricted security has come to rest for a period of time in the hands of an investor who is at investment risk, that investor is deemed not to have purchased the securities with a view to distribution and would be deemed not to be an underwriter, after meeting Rule 144's holding period and other conditions, absent a scheme to avoid registration. Since adopting Rule 144, the Commission has shortened its holding periods several times. The staff is evaluating whether the current holding periods are sufficient to protect investors in certain circumstances, such as the sale of equity securities acquired on conversion of a debt security held for the applicable holding period where the conversion price has been structured so that the investor may not have meaningful investment risk during the holding period other than issuer bankruptcy.

1. Regulation D

Regulation D, adopted in 1982,[25] is a series of rules that sets forth three exemptions from the registration requirements of the Securities Act.[26] One exemption, Rule 506(b) of Regulation D, is a non-exclusive safe harbor under Section 4(a)(2) of the Securities Act pursuant to which an issuer may offer and sell an unlimited amount of securities, provided that offers are made without the use of general solicitation or general advertising and sales are made only to accredited investors and up to 35 non-accredited investors who meet an investment sophistication standard.[27] A second exemption, Rule 506(c) of Regulation D, provides an exemption without any limitation on offering amount pursuant to which offers may be made through general solicitation or general advertising, so long as the purchasers in the offering are limited to accredited investors and the issuer takes reasonable steps to verify their accredited investor status.[28]

Offerings under both Rule 506(b) and Rule 506(c) must satisfy the conditions of:

- Rule 501 (definitions for the terms used in Regulation D);
- Rule 502(a) (integration);
- Rule 502(d) (limitations on resale); and
- Rule 506(d) (''bad actor'' disqualification).

Offerings under Rule 506(b) must also satisfy the conditions of:

- Rule 502(b) (type of information to be furnished); and
- Rule 502(c) (limitations on the manner of offering).

A third exemption, Rule 504 of Regulation D, provides an exemption from registration under the Securities Act for the offer and sale of up to $5 million of securities in a 12-month period.[29] Rule 504 was adopted pursuant to the Commission's authority under Section 3(b)(1) of the Securities Act.[30] Prior to rule changes adopted by the Commission in 2016, the aggregate amount of securities that could be offered and sold in a 12-month period under Rule 504 was $1 million.[31] In general, issuers [32] relying on Rule 504 may not use general solicitation or advertising to market the securities, and purchasers in a Rule 504 offering will receive securities subject to the limitations on resale in Rule 502(d). However, Rule 502(c)'s limitation on manner of offering and Rule 502(d)'s resale limitations are inapplicable if the issuer offers and sells the securities in compliance with certain state registration requirements, public filing, and delivery requirements or, if sales are made only to accredited investors, according to state law exemptions from registration that permit general solicitation and general advertising.[33]

In 2019, issuers in the Regulation D market raised approximately $1.56 trillion (average proceeds of $25.4 million). The vast majority of capital raised in this market, approximately $1.5 trillion (average proceeds of $26.5 million), was raised under Rule 506(b). Out of the remaining amount, offerings under Rule 506(c) raised approximately $66 billion (average proceeds of $17 million) and offerings under Rule 504 raised approximately $228 million (average proceeds of $0.6 million).

2. Regulation A

Regulation A was originally adopted by the Commission in 1936 as an exemption for small issuances under the authority of Section 3(b) of the Securities Act.[34] Section 401 of the JOBS Act [35] amended Section 3(b) of the Securities Act by designating Section 3(b), the Commission's exemptive authority for offerings of up to $5 million, as Section 3(b)(1), and adding new Sections 3(b)(2) through 3(b)(5) to the Securities Act.[36] Section 3(b)(2) directed the Commission to adopt rules adding a class of securities exempt from the registration requirements of the Securities Act for offerings of up to $50 million of securities within a 12-month period. Sections 3(b)(2) through (5) specify certain terms and conditions for such exempt offerings and authorize the Commission to adopt other terms, conditions, or requirements as necessary in the public interest and for the protection of investors. In 2015, the Commission adopted final rules to implement Section 401 of the JOBS Act by creating two tiers of Regulation A offerings: Tier 1, for offerings of up to $20 million in a 12-month period; and Tier 2, for offerings of up to $50 million in a 12-month period.[37] In 2018, the Commission adopted further amendments to the issuer eligibility and related provisions pursuant to the Economic Growth Act to allow issuers that are subject to the ongoing reporting requirements of Section 13 or 15(d) of the Exchange Act to use the exemption.[38] Table 3 broadly summarizes the Commission requirements for each tier.

[25] Revision of Certain Exemptions From Registration for Transactions Involving Limited Offers and Sales, Release No. 33–6389 (Mar. 8, 1982) [47 FR 11251 (Mar. 16, 1982)] (''Regulation D Adopting Release'').

[26] Rules 500 through 503 of Regulation D contain the notes, definitions, terms, and conditions that apply generally throughout Regulation D. The exemptions and safe harbor of Regulation D are set forth in Rule 504, Rule 506(b), and Rule 506(c). Rule 507 of Regulation D is a provision that disqualifies issuers under certain circumstances from relying on Regulation D for failure to file a notice of sales on Form D. Rule 508 of Regulation D provides that certain insignificant deviations from a term, condition, or requirement of Regulation D will not necessarily result in the loss of a Regulation D exemption.

[27] *See* Rule 506(b)(2)(ii) (stating that each purchaser who is not an accredited investor either alone or with a purchaser representative has such knowledge and experience in financial and business matters that such purchaser is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within that description).

[28] The Commission adopted Rule 506(c) in 2013 to implement Section 201(a) of the JOBS Act. *See* Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings, Release No. 33–9415 (Jul. 10, 2013) [78 FR 44771 (Jul. 24, 2013)] (''Rule 506(c) Adopting Release'').

[29] Rule 504.

[30] 15 U.S.C. 77c(b)(1).

[31] *See* Exemptions to Facilitate Intrastate and Regional Securities Offerings, Release No. 33–10238 (Oct. 26, 2016) [81 FR 83494 (Nov. 21, 2016)] (''Intrastate and Regional Offerings Release''). The removal of Rule 505 was effective on May 22, 2017. Rule 505 was an exemption from Securities Act registration that had been available to both non-reporting and reporting companies so long as the aggregate offering amount did not exceed $5 million in a 12-month period and certain other conditions were met.

[32] *See* Rule 504(a) (disqualifying entities that are subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, investment companies, or blank check companies from issuing securities under Rule 504).

[33] *See* Rule 504(b)(1).

[34] *See* Release No. 33–632 (Jan. 21, 1936).

[35] *See* Sec. 401(a), Public Law 112–106, 126 Stat. 306 (Apr. 5, 2012).

[36] *See* 15 U.S.C. 77c(b)(2) through (5).

[37] *See* Amendments for Small and Additional Issues Exemptions under the Securities Act (Regulation A), Release No. 33–9741 (March 25, 2015) [80 FR 21806 (Apr. 20, 2015)] (''2015 Regulation A Release'').

[38] *See* Amendments to Regulation A, Release No. 33–10591 (Dec. 19, 2018) [84 FR 520 (Jan. 31, 2019)] (''2018 Regulation A Release'').

TABLE 3—OVERVIEW OF REGULATION A REQUIREMENTS

	Tier 1	Tier 2
Issuer Requirements	U.S. or Canadian issuers; excludes blank check companies, registered investment companies, business development companies, issuers of certain securities, and certain issuers subject to a Section 12(j) order.	
Offering Limit within a 12-month Period.	$20 million	$50 million.
Offering Communications	Testing-the-waters permitted before and after the offering statement is filed.	
Investor Limits	No limits	Non-accredited investors are subject to investment limits based on annual income and net worth, unless securities will be listed on a national securities exchange.
SEC Filing Requirements	Form 1–A filed with the Commission, including two years of financial statements (which may be unaudited).	Form 1–A filed with the Commission, including two years of audited financial statements.
Restrictions on Resale	No	No.
Disqualification Provisions	Felons and bad actors disqualified in accordance with Rule 262.	
Preemption of State Registration and Qualification.	No	Yes.
Ongoing Reporting	*Exit report* due within 30 calendar days after termination or completion of an offering.	*Annual report* on Form 1–K due within 120 calendar days of issuer's fiscal year end; *Semi-annual report* on Form 1–SA due within 90 calendar days after the end of the first six months of issuer's fiscal year; *Current reports* on Form 1–U due within four business days of occurrence of one of the events specified in that form; and if applicable, an *exit report* on Form 1–Z to terminate an issuer's reporting obligations.

The Commission is required by Section 3(b)(5) of the Securities Act to review the Tier 2 offering limit every two years. In addition to revisiting the Tier 2 offering limit, the Commission stated in the 2015 Regulation A Release that the staff would undertake to review the Tier 1 offering limit at the same time.[39] The Commission also stated that the staff would study and submit a report to the Commission no later than five years following the adoption of the amendments on the impact of both Tier 1 and Tier 2 offerings on capital formation and investor protection.[40] The staff report on Regulation A, which includes additional detail on Regulation A, is discussed in Section II.E.1.

From June 2015 through December 2019, issuers in the Regulation A market reported raising approximately $2.4 billion in 382 qualified offerings. The vast majority of capital raised under Regulation A, approximately $2.2 billion (90.6 percent), was raised under Tier 2, with only $230 million (9.4 percent) raised under Tier 1.

3. Regulation Crowdfunding

Title III of the JOBS Act added Securities Act Section 4(a)(6), which provides an exemption from registration for certain crowdfunding transactions.[41] To qualify for the exemption under Section 4(a)(6), transactions must meet a number of statutory requirements including limits on the amount an issuer may raise, limits on the amount an individual may invest and a requirement that the transactions be conducted through an intermediary that is registered as either a broker-dealer or a ''funding portal.'' In addition, Title III added Section 4A to the Securities Act, which requires, among other things, that issuers and intermediaries that facilitate transactions under Section 4(a)(6) provide certain specified information to investors and the Commission. Title III also mandated that the Commission establish bad actor provisions disqualifying certain issuers from availing themselves of the Section 4(a)(6) exemption and adopt rules to exempt from the registration requirements of Section 12(g), either conditionally or unconditionally, securities acquired pursuant to an offering under Section 4(a)(6). In 2015, to implement the requirements of Title III, the Commission adopted Regulation Crowdfunding, which became effective on May 16, 2016.[42] On March 31, 2017, the Commission adjusted for inflation certain thresholds in Regulation Crowdfunding, as required by Section 4A(h).[43] From May 2016 through December 2019, issuers in the Regulation Crowdfunding market reported raising approximately $170 million in 795 completed offerings (an average of approximately $0.21 million raised in each offering).

4. Rule 147 and Rule 147A

Rule 147 is considered a ''safe harbor'' under Section 3(a)(11) of the Securities Act and provides objective standards that an issuer can rely on to meet the

[39] *See* 2015 Regulation A Release, at Section II.A.

[40] *See id.* The 2015 Regulation A Release stated that the report would include, but not be limited to, a review of: (1) The amount of capital raised under the amendments; (2) the number of issuances and amount raised by both Tier 1 and Tier 2 offerings; (3) the number of placement agents and brokers facilitating the Regulation A offerings; (4) the number of federal, state, or any other actions taken against issuers, placement agents, or brokers with respect to both Tier 1 and Tier 2 offerings; and (5) whether any additional investor protections are necessary for either Tier 1 or Tier 2.

[41] Crowdfunding generally refers to a method of capital raising in which an entity or individual raises funds via the internet from a large number of people typically making small individual contributions.

[42] *See* Crowdfunding, Release No. 33–9974 (Oct. 30, 2015) [80 FR 71387 (Nov. 16, 2015)] (''Crowdfunding Adopting Release'').

[43] *See* Inflation Adjustments and Other Technical Amendments under Titles I and III of the JOBS Act (Technical Amendments; Interpretation), Release No. 33–10332 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)].

requirements of that exemption.[44] The Rule 147 safe harbor was intended to provide assurances that the intrastate offering exemption would be used for the purpose Congress intended in enacting Section 3(a)(11), namely the local financing of issuers by investors within the issuer's state or territory.[45] Under Rule 147, states retain the flexibility to adopt requirements that are consistent with their respective interests in facilitating capital formation and protecting their resident investors in intrastate securities offerings, including the authority to impose additional disclosure requirements for offers and sales made to persons within their state or territory, and the authority to limit the ability of certain bad actors to rely on applicable state exemptions.[46]

Rule 147A is an intrastate offering exemption adopted by the Commission in 2016 that seeks to accommodate modern business practices and communications technology and provide an alternative means for smaller issuers to raise capital locally, including through offerings relying on intrastate crowdfunding provisions.[47] Rule 147A was adopted pursuant to the Commission's general exemptive authority under Section 28 of the Securities Act and therefore is not subject to the statutory limitations of Section 3(a)(11). Accordingly, Rule 147A has no restriction on offers, but requires that all sales be made only to residents of the issuer's state or territory to ensure the intrastate nature of the exemption. Rule 147A also does not require issuers to be incorporated or organized in the same state or territory where the offering occurs so long as issuers can demonstrate the in-state nature of their business. Consistent with Rule 147, states retain the flexibility to adopt requirements that are consistent with their respective interests in facilitating capital formation and protecting their resident investors in intrastate securities offerings, including the authority to impose additional disclosure requirements for offers and sales made to persons within their state or territory, or the authority to limit the ability of certain bad actors to rely on applicable state exemptions.

Table 4 broadly summarizes the Commission requirements for each rule. We refer to ''in-state'' as the state or territory in which the issuer is resident and doing business at the time of the sale of the security.

TABLE 4—OVERVIEW OF RULE 147 AND RULE 147A REQUIREMENTS

	Requirements of Rule 147 (safe harbor under Section 3(a)(11))	Requirements of Rule 147A
The issuer is organized in-state. (Rule 147(c)(1)(i))	✓	
The officers, partners, or managers of the issuer primarily direct, control and coordinate the issuer's activities (''principal place of business'') in-state. (Rule 147(c)(1); and Rule 147A(c)(1))	✓	✓
The issuer satisfies at least one of the ''doing business'' requirements. (Rule 147(c)(2); and Rule 147A(c)(2))	✓	✓
Offers are limited to in-state residents or persons whom the issuer reasonably believes are in-state residents. (Rule 147(d))	✓	
Sales are limited to in-state residents or persons whom the issuer reasonably believes are in-state residents. (Rule 147(d); and Rule 147A(d))	✓	✓
The issuer obtains a written representation from each purchaser as to residency. (Rule 147(f)(1)(iii); and Rule 147A(f)(1)(iii))	✓	✓

II. Discussion of Proposed Amendments

The proposed amendments are intended to address gaps and complexities in the exempt offering framework that may impede access to capital for issuers and thereby limit investment opportunities. More specifically, the amendments would:

- Address, in one broadly applicable rule, the ability of issuers to move from one exemption to another, and ultimately to a registered offering, providing more certainty to issuers raising capital;
- Provide greater certainty to issuers and protect investors by setting clear and consistent rules governing offering communications between investors and issuers;
- Address potential gaps and inconsistencies in our rules by increasing offering and investment limits based on our experience with the rules, marketplace practices, capital raising trends, and comments received; and
- Harmonize certain disclosure requirements and bad actor disqualification provisions to reduce differences between exemptions, while preserving or increasing investor protections.

A. Integration

We are proposing to modernize and simplify the Securities Act integration framework for registered and exempt offerings. This framework currently consists of a mixture of rules and Commission guidance for determining whether multiple securities transactions should be considered part of the same offering. As the number of exemptions from registration available to issuers has evolved over time through Commission rules and legislative changes, the integration framework has grown more complex. This complexity has allowed for regulatory uncertainty to develop, especially as issuers grow, and transition between utilizing types of exempt and registered offerings. The proposed amendments, discussed in Table 5 below, seek to improve the integration framework to allow an efficient path to capital formation, while preserving the investor protections in the exemptions from registration.

[44] *See* Definitions and Clarification of Certain Conditions Regarding Intrastate Offering Exemption, Release No. 33–5450 (Jan. 7, 1974) [39 FR 2353 (Jan. 21, 1974)] (''Rule 147 Adopting Release''). *See also* ''Part of an Issue,'' ''Person Resident,'' and ''Doing Business Within,'' Release No. 33–5349 (Jan. 8, 1973) [38 FR 2468 (Jan. 26, 1973)].

[45] *See* Rule 147 Adopting Release. *See also* Intrastate and Regional Offerings Release.

[46] *See* Intrastate and Regional Offerings Release, at Section I.

[47] *See* Intrastate and Regional Offerings Release.

The Commission first articulated the integration concept in 1933 and further developed it in two interpretive releases issued in the 1960s.[48] The interpretive releases state that determining whether a particular securities offering should be integrated with another offering requires an analysis of the specific facts and circumstances of the offerings. The Commission identified five factors to consider in determining whether the offerings should be integrated. The five factors are whether: (1) The different offerings are part of a single plan of financing, (2) the offerings involve issuance of the same class of security, (3) the offerings are made at or about the same time, (4) the same type of consideration is to be received, and (5) the offerings are made for the same general purpose.[49] A common critique of this five factor analysis is that the Commission did not assign any specific weights to any of the five factors, nor indicate how many of the factors need to be present in order for there to be integration.[50]

In 1982, the Commission relied on the five factor test in establishing the framework used to determine whether two offerings that fall outside of the Rule 502(a) safe harbor should be integrated and treated as one offering.[51] Rule 506(b) of Regulation D is by far the most commonly used exemption from registration. As a result, application of the integration framework in Rule 502(a) tends to be the predominant means to analyze whether two offerings should be integrated if the exemption relied upon does not have its own specific integration provision. Notwithstanding the fact that Rule 502(a) only applies to Regulation D offerings, the integration framework in Rule 502(a) is often referred to when considering integration issues arising in other exempt offerings which do not have their own integration guidelines, such as Section 4(a)(2).

In 2007 guidance, the Commission set forth a framework other than the five factor test for analyzing the integration of simultaneous registered and private offerings.[52] The Commission noted that the determination as to whether the filing of a registration statement should be considered to be a general solicitation or general advertising that would affect the availability of the Section 4(a)(2) exemption for a concurrent private placement should be based on a consideration of whether the investors in the private placement were solicited by the registration statement or through some other means that would not foreclose the availability of the Section 4(a)(2) exemption.[53] The Commission stated that issuers should analyze whether the offering is exempt under Section 4(a)(2) ''on its own,'' including whether securities were offered and sold to the private placement investors through the means of a general solicitation in the form of the registration statement.[54]

More recently, in connection with the Regulation A and Regulation Crowdfunding rulemakings in 2015 and the Rule 147 and Rule 147A rulemaking in 2016, the Commission set forth a facts and circumstances integration framework in the context of concurrent exempt offerings. The facts and circumstances integration framework includes situations where one offering permits general solicitation and the other does not, as well as situations where both offerings rely on exemptions permitting general solicitation.[55] Under this analysis, where an integration safe harbor is not available, integration of concurrent or subsequent offers and sales of securities with any offering conducted under Regulation A, Regulation Crowdfunding, Rule 147, or Rule 147A will depend on the particular facts and circumstances, including whether each offering complies with the requirements of the exemption that is being relied on for the particular offering.

Commenters on the Concept Release generally supported clarifying and modernizing the existing integration standards.[56] One commenter suggested that the current approach to integration using the five factor test is ''unnecessarily complex, and both issuers and investors would benefit from more clarity as to the scope of the integration doctrine, particularly in the context of Regulation D.'' [57] Some commenters supported using the approach to integration in the Commission's recent rulemakings as the basis for a more comprehensive, general integration rule.[58] One of these

[48] *See* SEC Release No. 33–97 (Dec. 28, 1933); Section 3(a)(11) Exemption for Local Offerings, Release No. 33–4434 (Dec. 6, 1961) [26 FR 11896 (Dec, 13, 1961)] (''Section 3(a)(11) Release''); and Non-Public Offering Exemption, Release No. 33–4552 (Nov. 6, 1962) [27 FR 11316 (Nov. 16, 1962)] (''Non-Public Offering Exemption Release'').

[49] *See* Rule 502(a); Section 3(a)(11) Release; and Non-Public Offering Exemption Release.

[50] *See* Stanley Keller, Integration of Private and Public Offerings 2019 (March 2019) at page 6 (''The five factor test has not brought certainty to the area because its application is subjective and the staff has not provided definitive guidance as to what weight to give to the various factors or indeed how many of them have to be met.''). *See also* ABA Task Force Report on ''Integration of Securities Offerings,'' 41 Bus. Law. 595 (1986) (proposing an integration safe harbor rule to provide increased certainty).

[51] *See* Regulation D Adopting Release.

[52] *See* Revisions of Limited Offering Exemptions in Regulation D, Release No. 33–8828 (Aug. 3, 2007) [72 FR 45116 (Aug. 10, 2007)] (''Regulation D Proposing Release''), at Section II.C.1.

[53] *Id.*

[54] *Id.* The Commission provided the following examples: If an issuer files a registration statement and then seeks to offer and sell securities without registration to an investor who became interested in the purportedly private placement offering by means of the registration statement, then the Section 4(a)(2) exemption would not be available for that offering. If the prospective private placement investor became interested in the concurrent private placement through some means other than the registration statement that was consistent with Section 4(a)(2), such as through a substantive, pre-existing relationship with the issuer or direct contact by the issuer or its agents outside of the public offering effort, then the filing of the registration statement generally would not impact the potential availability of the Section 4(a)(2) exemption for that private placement and the private placement could be conducted while the registration statement for the public offering was on file with the Commission. Similarly, if the issuer is able to solicit interest in a concurrent private placement by contacting prospective investors who (1) were not identified or contacted through the marketing of the public offering and (2) did not independently contact the issuer as a result of the general solicitation by means of the registration statement, then the private placement could be conducted in accordance with Section 4(a)(2) while the registration statement for a separate public offering was pending.

[55] *See* 2015 Regulation A Release, at Section II.B.5; Crowdfunding Adopting Release, at Section II.A.1.c; and Intrastate and Regional Offerings Release, at Section II.B.5.

[56] *See, e.g.,* letter from Davis Polk & Wardwell LLP dated September 24, 2019 (''Davis Polk Letter''); letter from Dechert LLP dated September 24, 2019 (''Dechert Letter''); CrowdCheck Letter; letter from Securities Industry and Financial Markets Association dated September 24, 2019 (''SIFMA Letter''); and 2019 Small Business Advisory Committee Recommendation on the Exemptive Offering Framework (stating ''Integration should be revised so that the exemptions can be better utilized.''). *But see* letter from Public Investors Advocate Bar Association dated September 24, 2019 (''PIABA Letter'') (positing that shortening the six month period in Rule 502(a) would ''serve to promote'' Ponzi schemes); and letter from North American Securities Administrators Association dated October 11, 2019 (''NASAA Letter'') (positing that ''loosening'' integration safe harbors would ''increase the likelihood of regulatory arbitrage or create gaps in the investor protection landscape'').

[57] *See* letter from Center for Capital Markets Competitiveness dated September 24, 2019 (''CCMC Letter'') (indicating that the uncertainty surrounding the current integration doctrine creates a ''barrier to companies seeking to raise capital'').

[58] *See, e.g.,* Davis Polk Letter (generally ''welcom[ing] harmonizing exempt offerings with more bright-line rules,'' while noting that ''as long as each Exempt Offering complies with its applicable rules, effective deregulation should result in each offering standing on its own''); Dechert Letter; letter from Committee on Securities Regulation of the Business Law Section of the New York State Bar Association dated October 16, 2019 (''NYSBA Letter''); CrowdCheck Letter; letter from Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association dated October 16, 2019 (''ABA Letter''); and CCMC Letter (supporting one integration doctrine along the lines of the analysis articulated in connection with Regulation A and Rules 147 and 147A.).

commenters explained that the approach to analyzing integration issues reflected in these recent rulemakings also ''preserves the investor protections of each exemption'' while providing issuers with more certainty in planning their offerings under ''changing circumstances, markets and environments.'' [59] Other commenters, as well as the 2016, 2017, and 2018 Government-Business Forums on Small Business Capital Formation (''Small Business Forums''), also recommended that the Commission provide additional clarity about the integration of exempt offerings in which general solicitation is permitted—such as Rule 506(c) offerings.[60]

We believe that statutory and regulatory changes to the Securities Act exemptive scheme, including those arising from the JOBS Act, developments in the capital markets, and the evolution of communications technology compel a further examination of the integration framework and its application throughout the Securities Act rules. The proposed rules would build upon the approach to integration in the Commission's recent rulemakings and provide comprehensive rules applicable to all securities offerings under the Securities Act, including registered and exempt offerings.

Providing additional clarity on how securities offerings interrelate, including the relationship between exempt and registered offerings and when two or more securities offerings will be considered integrated as one offering, should reduce uncertainty and perceived risk among issuers when considering and planning possible capital raising alternatives, while preserving investor protections built into the respective offering exemptions. We also believe that providing greater certainty to issuers on how securities offerings interrelate and the flexibility to choose between types of offerings may encourage issuers to raise more capital in the securities markets, including in registered offerings.[61]

We are proposing to amend the current integration framework to better facilitate the determination as to whether separate sales of securities are part of the same offering (*i.e.,* are considered integrated).[62] Our proposed integration framework provides a general principle of integration that looks to the particular facts and circumstances of the offering, and focuses the analysis on whether the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering. To assist in the application of the general principle, we are proposing provisions applying this general principle to specific fact patterns. To provide additional clarity, we are proposing four non-exclusive safe harbor integration provisions. The following tables provide an overview of the proposed general integration principle and safe harbors discussed in this section.

TABLE 5—OVERVIEW OF THE PROPOSED GENERAL INTEGRATION PRINCIPLE AND SAFE HARBORS

Integration Principle	
General Principle of Integration	For all offerings not covered by a safe harbor, offers and sales would not be integrated if, based on the particular facts and circumstances, the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering.
Application of the General Principle to exempt offerings where general solicitation is not permitted.	The issuer must have a reasonable belief, based on the facts and circumstances, that: (1) The purchasers in each exempt offering were not solicited through the use of general solicitation; or (2) the purchasers in each exempt offering established a substantive relationship with the issuer (or person acting on the issuer's behalf) prior to the commencement of the offering not permitting general solicitation.
Application of the General Principle to concurrent exempt offerings that each allow general solicitation.	If an exempt offering permitting general solicitation includes information about the material terms of a concurrent offering under another exemption also permitting general solicitation, the offering materials must include the necessary legends for, and otherwise comply with, the requirements of each exemption.
Non-Exclusive Integration Safe Harbors	
Safe Harbor 1	Any offering made more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, would not be integrated; provided that, for an exempt offering for which general solicitation is not permitted, the purchasers either were not solicited through the use of general solicitation, or established a substantive relationship with the issuer prior to the commencement of the offering for which general solicitation is not permitted.
Safe Harbor 2	Offers and sales made in compliance with Rule 701, pursuant to an employee benefit plan, or in compliance with Regulation S would not be integrated with other offerings.
Safe Harbor 3	An offering for which a Securities Act registration statement has been filed would not be integrated if made subsequent to: (i) A terminated or completed offering for which general solicitation is not permitted; (ii) a terminated or completed offering for which general solicitation is permitted and made only to qualified institutional buyers (''QIBs'') [63] and institutional accredited investors (''IAIs''); [64] or (iii) an offering for which general solicitation is permitted that terminated or completed more than 30 calendar days prior to the commencement of the registered offering.

[59] *See* Dechert Letter.

[60] *See, e.g.,* Davis Polk Letter (noting that ''the current language of Rule 152 does not provide an integration safe harbor for an issuer that conducts a Rule 506(c) offering and then subsequently engages in a registered offering''); Dechert Letter (suggesting that Rule 152 be amended to account for Rule 506(c)); and ABA Letter (supporting broadening Rule 152 so that it applies to offerings under Rule 506(b) and Rule 506(c)). *See also* Final Report of the 2016 SEC Government-Business Forum on Small Business Capital Formation (March 2017), *available at https://www.sec.gov/info/smallbus/gbfor35.pdf* (''2016 Forum Report''); Final Report of the 2017 SEC Government-Business Forum on Small Business Capital Formation (March 2018), *available at https://www.sec.gov/files/gbfor36.pdf* (''2017 Forum Report''); and Final Report of the 2018 SEC Government-Business Forum on Small Business Capital Formation (June 2019), *available at https://www.sec.gov/info/smallbus/gbfor37.pdf* (''2018 Forum Report'') (all three forums recommending that the Commission clarify that Rule 152 applies to a Rule 506(c) offering so that an issuer using Rule 506(c) may subsequently engage in a registered public offering without adversely affecting the Rule 506(c) offering exemption).

[61] *See, e.g.,* CCMC Letter.

[62] The focus of this release is on several exemptions from registration under the Securities Act that facilitate capital raising. We are not proposing to extend these rules to business combination transactions, for which we have already adopted rules or provided guidance that will continue to apply. *See, e.g.,* Rule 165 [17 CFR 230.165].

TABLE 5—OVERVIEW OF THE PROPOSED GENERAL INTEGRATION PRINCIPLE AND SAFE HARBORS—Continued

Safe Harbor 4	Offers and sales made in reliance on an exemption for which general solicitation is permitted would not be integrated if made subsequent to any prior terminated or completed offering.

The proposed integration framework and safe harbor provisions would be set forth in new Rule 152, which would replace current Rules 152 and 155 concerning the integration of non-public and public offerings.[65] Consistent with current Rule 155, proposed Rule 152 would specify that the safe harbors are not available to any issuer for any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Securities Act. Finally, to ensure consistency in the application of the integration framework across exemptions, we are proposing to replace the integration provisions of Regulation D, Regulation A, Regulation Crowdfunding, and Rules 147 and 147A with references to proposed Rule 152.

1. Integration Principles

We are proposing to establish a general principle of integration that would require an issuer to consider the particular facts and circumstances of each offering, including whether the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering. We also are proposing two provisions applying this general principle to specific fact patterns.

a. General Principle of Integration

Based on our review of the existing integration framework and after consideration of comments, we are proposing to revise Rule 152 to provide a general principle of integration based upon a facts and circumstances analysis that codifies Commission guidance on integration originally provided in 2007. The general principle of integration, as set forth in proposed paragraph (a) of Rule 152 would apply to all offers and sales of securities not covered by one of the four safe harbors set forth in proposed paragraph (b) of Rule 152, which we describe below. Specifically, our proposed general principle of integration provides that offers and sales will not be integrated if, based on the particular facts and circumstances, the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering. This proposed facts and circumstances analysis of integration would replace the traditional five factor test first articulated by the Commission in 1962.

b. Application of the General Principle of Integration

We also propose to include two provisions applying the general integration principles that would supplement and provide greater specificity to the facts and circumstances analysis:

- For an exempt offering for which general solicitation is not permitted, offers and sales will not be integrated with other offerings if the issuer has a reasonable belief, based on the facts and circumstances, that (i) the purchasers in each exempt offering were not solicited through the use of general solicitation, or (ii) the purchasers in each exempt offering established a substantive relationship with the issuer (or person acting on the issuer's behalf) prior to the commencement of the offering not permitting general solicitation; and
- For an exempt offering permitting general solicitation that includes information about the material terms of a concurrent offering under another exemption also permitting general solicitation, the offering materials must include the necessary legends for, and otherwise comply with, the requirements of each exemption.

Integration With Exempt Offering for Which General Solicitation Is Not Permitted

Proposed Rule 152(a)(1) would codify Commission guidance first issued in 2007 in the context of setting forth a framework for analyzing how an issuer can conduct simultaneous registered and private offerings.[66] In that guidance, the Commission noted that the determination as to whether the filing of a registration statement should be considered to be a general solicitation or general advertising that would affect the availability of the Section 4(a)(2) exemption for a concurrent private placement should be based on a consideration of whether the investors in the private placement were solicited by the registration statement or through some other means that would not foreclose the availability of the Section 4(a)(2) exemption.[67] In 2015 and 2016, the Commission provided additional guidance and indicated that, for example, an issuer conducting a concurrent exempt offering for which general solicitation is not permitted will need to be satisfied that purchasers in that offering were not solicited by means of an offering made in reliance on Regulation A, Regulation Crowdfunding, Rule 147, or Rule 147A.[68]

Commenters supported allowing concurrent exempt offerings, where one offering permits general solicitation such as Rule 506(c), and the other prohibits general solicitation, such as Rule 506(b).[69] Proposed Rule 152(a)(1) would codify the position that an issuer may conduct such concurrent offerings without integration concerns, provided that for an offering prohibiting general solicitation the issuer has a reasonable belief, based on the facts and circumstances, that the purchasers in each exempt offering were not solicited through the use of general solicitation or the purchasers in each exempt offering established a substantive relationship with the issuer (or person acting on the issuer's behalf) prior to the commencement of the offering not permitting general solicitation. The most common scenario entails an issuer conducting a registered offering while also soliciting investors for a concurrent Rule 506(b) or Section 4(a)(2) offering. For example, an issuer filing a Securities Act registration statement with the Commission would be able to conduct a concurrent Rule 506(b) offering if it reasonably believes that the

[63] *See* 17 CFR 230.144(a)(1) (defining ''qualified institutional buyer'').

[64] *See* Rule 501(a)(1), (2), (3), (7) and (8) (listing entities that are considered ''institutional accredited investors'').

[65] As a result of the proposed changes, we are proposing to remove and reserve Rule 155.

[66] *See* Regulation D Proposing Release.

[67] *Id.*

[68] For a concurrent offering under Rule 506(b), purchasers in the Rule 506(b) offering could not be solicited by means of a general solicitation under Regulation A (including any ''testing-the-waters'' communications), Regulation Crowdfunding, or Rule 147 or 147A. The issuer would need an alternative means of establishing how purchasers in the Rule 506(b) offering were solicited. For example, the issuer may have had a pre-existing substantive relationship with such purchasers. *See* 2015 Regulation A Release, at Section II.B.5; Crowdfunding Adopting Release, at Section II.A.1.c; and Intrastate and Regional Offerings Release, at Section II.B.5.

[69] *See, e.g.,* Davis-Polk Letter, and letter from CoinList dated September 26, 2019 (''CoinList Letter''); *see also* the 2016 Forum Report, the 2017 Forum Report, and the 2018 Forum Report.

investors in the Rule 506(b) offering were not solicited by the registration statement nor became interested in the concurrent offering through the use of general solicitation in connection with the registered offering.

Investors with whom the issuer has a pre-existing substantive relationship may include the issuer's existing or prior investors, investors in prior deals of the issuer's management, or friends or family of the issuer's control persons. For example, proposed Rule 152(a)(1)(ii) would allow a purchaser with whom the issuer has a pre-existing substantive relationship to become aware of the issuer's registered offering due to the marketing of the offering, and still participate in a concurrent or subsequent private offering by the issuer in reliance on an exemption prohibiting general solicitation. However, a pre-existing substantive relationship is not the exclusive means of demonstrating the absence of a general solicitation. For example, the issuer could sell in reliance on Rule 506(b) or Section 4(a)(2) only to investors whom the issuer or its agents contacted outside of its public offering, or general solicitation effort.[70]

Proposed Rule 152(a)(1) would also apply to an offering made under an exemption from registration for which general solicitation is prohibited that follows a registered offering or an offering that permits general solicitation. For example, an offering conducted in reliance on Rule 506(c) and a subsequent offering conducted in reliance on Rule 506(b) would not be integrated if the investors in the Rule 506(b) offering were not solicited through the use of general solicitation in connection with the Rule 506(c) offering, or if the investors established a substantive relationship with the issuer (or person acting on the issuer's behalf) prior to the commencement of the Rule 506(b) offering.

In general, we view a ''pre-existing'' relationship as one that the issuer has formed with an offeree prior to the commencement of the securities offering or, alternatively, that was established through another person (for example a registered broker-dealer or investment adviser) prior to that person's participation in the offering.[71] A ''substantive'' relationship is one in which the issuer (or a person acting on its behalf, such as a registered broker-dealer or investment adviser) has sufficient information to evaluate, and does, in fact, evaluate, an offeree's financial circumstances and sophistication, in determining his or her status as an accredited or sophisticated investor.[72]

Integration With Exempt Offerings for Which General Solicitation Is Permitted

Proposed Rule 152(a)(2) builds upon the guidance set forth by the Commission in its 2015 Regulation A and Regulation Crowdfunding rulemakings and in its 2016 Rule 147 and Rule 147A rulemaking. In the context of two concurrent offerings each relying on a Securities Act exemption permitting general solicitation,[73] proposed Rule 152(a)(2) would clarify that if an issuer's general solicitation materials for one offering discuss the material terms[74] of another concurrent offering, the offering materials must include the necessary legends for, and otherwise comply with, the requirements of each exemption.[75] This would provide issuers with greater flexibility and the ability to more effectively use existing Securities Act exemptions without compromising the investor protections included in the requirements of each exemption.

For example, under the proposed rule, an issuer may undertake an offering in reliance on Rule 506(c), so long as the issuer meets all of the conditions to that exemption, including taking reasonable steps to verify that all purchasers in the Rule 506(c) offering are accredited investors, while conducting a concurrent offering in reliance on Regulation A, so long as the concurrent offering complies with all the requirements of Regulation A. If this issuer were to discuss in its Rule 506(c) general solicitation materials the material terms of its concurrent Regulation A offering, proposed Rule 152(a)(2) would require the issuer to include in its Rule 506(c) general solicitation materials all the necessary legends and comply with any restrictions on the use of general solicitation under Regulation A.[76]

[70] *See, e.g.,* Regulation D Proposing Release, at text accompanying notes 127–128. Whether there has been a general solicitation is a fact-specific determination. In general, the greater the number of persons without financial experience, sophistication, or any prior personal or business relationship with the issuer that are contacted by an issuer or persons acting on its behalf through impersonal, non-selective means of communication, the more likely the communications are part of a general solicitation.

[71] Certain offerings by private funds that rely on the exclusions from the definition of ''investment company'' set forth in Sections 3(c)(1) and 3(c)(7) of the Investment Company Act posted on a website platform may be able to rely on a limited staff accommodation with respect to the timing of the formation of a relationship. *See* Division of Corporation Finance no-action letter to Lamp Technologies, Inc. (May 29, 1997).

[72] We do not believe that self-certification alone (by checking a box) without any other knowledge of a person's financial circumstances or sophistication would be sufficient to form a ''substantive'' relationship for these purposes.

Persons other than registered broker-dealers and investment advisers may form a pre-existing, substantive relationship with an offeree as a means of establishing that a general solicitation is not involved in a Regulation D offering. Generally, whether a ''pre-existing, substantive relationship'' exists turns on procedures established by broker-dealers in connection with their customers. This is because traditional broker-dealer relationships require that a broker-dealer deal fairly with, and make suitable recommendations to, customers, and, thus, implies that a substantive relationship exists between the broker-dealer and its customers. We have long stated, however, that the presence or absence of a general solicitation is always dependent on the facts and circumstances of each particular case. Thus, there may be facts and circumstances in which a third party, other than a registered broker-dealer, could establish a ''pre-existing, substantive relationship'' sufficient to avoid a ''general solicitation.'' *See, e.g.,* Use of Electronic Media, Release No. 7856 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] (''Use of Electronic Media Release'').

We also recognize there may be particular instances where issuers may develop pre-existing, substantive relationships with offerees. However, in the absence of a prior business relationship or a recognized legal duty to offerees, it is likely more difficult for an issuer to establish a pre-existing, substantive relationship, especially when contemplating or engaged in an offering over the internet. Issuers would have to consider not only whether they have sufficient information about particular offerees, but also whether they in fact use that information appropriately to evaluate the financial circumstances and sophistication of the offerees prior to commencing the offering.

[73] For example, Rule 506(c), Regulation A, and Regulation Crowdfunding. Concurrent offerings permitting general solicitation may also include intrastate or regional offerings relying on Rules 147 and 147A or Rule 504(b)(1)(i), (ii) or (iii), all of which permit general solicitation but also require compliance with state registration requirements or exemptions to state registration under state securities laws. However, an issuer would not be able to describe the terms of a Rule 147 offering using any form of general solicitation viewable by out-of-state residents, as this would constitute an offer by the issuer to residents residing out of the state in which the issuer has its principal place of business, which is prohibited by the Rule 147 safe harbor for a valid Section 3(a)(11) exempt offering.

[74] Depending on the facts and circumstances, the material terms of the offering could include the amount of the securities offered, the nature of the securities, the price of the securities, and the closing date of the offering period. *See* Rule 204 of Regulation Crowdfunding.

[75] For example, the limitations imposed on advertising the terms of the offering pursuant to Rule 204 of Regulation Crowdfunding would limit the issuer's general solicitation referencing the terms of that offering in a concurrent offering made pursuant to Regulation A, Rule 506(c), or Rule 147A. *See* Concept Release, at text accompanying note 483. In the case of a Regulation A offering, a Form 1–A filed with the Commission that discusses the material terms of a concurrent offering by the same issuer under Regulation Crowdfunding would not comply with the limitations on advertising in Rule 204.

[76] Rule 255 of Regulation A requires certain statements in any communications constituting offers made in reliance on Regulation A. Any such legends or statements would not be required to be included in the issuer's Rule 506(c) general solicitation materials if such materials do not mention the material terms of the other concurrent offering.

2. Integration Safe Harbors

In order to simplify the integration analysis and harmonize our integration framework for both exempt and registered offerings, we are proposing four non-exclusive safe harbors from integration. For offers and sales meeting the conditions of these safe harbors, the issuer need not conduct any further integration analysis.[77] By providing a more simplified and harmonized integration framework, these safe harbors are intended to reduce uncertainty and provide greater confidence to issuers in planning and choosing their capital raising options under the Securities Act, including registered offerings. Proposed Rule 152(b) would provide the following:

- Any offering made more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, will not be integrated, provided that:
  - For an exempt offering for which general solicitation is not permitted, the purchasers either: (i) Were not solicited through the use of general solicitation, or (ii) established a substantive relationship with the issuer prior to the commencement of the offering for which general solicitation is not permitted;
- Offers and sales made in compliance with Rule 701, pursuant to an employee benefit plan, or in compliance with Regulation S will not be integrated with other offerings;
- An offering for which a registration statement under the Securities Act has been filed will not be integrated if it is made subsequent to:
  - A terminated or completed offering for which general solicitation is not permitted;
  - A terminated or completed offering for which general solicitation is permitted and made only to QIBs and IAIs; or
  - An offering for which general solicitation is permitted that terminated or completed more than 30 calendar days prior to the commencement of the registered offering; or
- Offers and sales made in reliance on an exemption for which general solicitation is permitted will not be integrated if made subsequent to any prior terminated or completed offering.

a. 30-Day Integration Safe Harbor

Current Securities Act integration safe harbors generally provide for a six-month safe harbor time period, outside of which other offerings will not be considered as integrated, or part of the same offering.[78] We are proposing a safe harbor in Rule 152(b)(1) that would shorten this time period to 30 days and harmonize current Securities Act exemptions by providing the same 30-day safe harbor time period throughout their integration provisions. This safe harbor would apply to both offerings for which a registration statement has been filed under the Securities Act and exempt offerings.[79] In light of the changes in technology, the markets, and the securities laws since 1982, we preliminarily believe a shortened 30-day safe harbor time period would enhance an issuer's flexibility and expand the capital raising options available to issuers under the Securities Act to access capital when needed, while still providing a sufficient length of time to impede what integration seeks to prevent: Improperly avoiding registration by artificially dividing a single offering into multiple offerings. In considering an appropriate cooling off period between offerings, we considered changes in the informational environment that have occurred since the six-month time period was adopted in Regulation D in 1982.[80] Given the accelerating speed and consumption of electronically disseminated information in today's financial marketplace, we believe a 30-day time frame is sufficient to mitigate concerns that an exempt offering may condition the market for a subsequent registered offering or undermine the protections of a subsequent exempt offering. In this regard, we think it likely that the effects of any offers made more than 30 days prior to or after commencement of another offering would be sufficiently diluted by intervening market developments so as to render an integration analysis unnecessary.

In order to provide clarity with respect to use of the 30-day safe harbor where an offering under an exemption that does not permit general solicitation, such as Rule 506(b), follows the filing of a registration statement for a registered offering or an exempt offering that permits general solicitation, such as Rule 506(c), proposed Rule 152(b)(1) would provide that the purchasers in the offering for which general solicitation is not permitted (i) must not have been solicited through the use of general solicitation, or (ii) must have established a substantive relationship with the issuer prior to the commencement of the offering for which general solicitation is not permitted. This is consistent with the Commission's current guidance and proposed Rule 152(a)(1), but we believe it is appropriate to address this in proposed Rule 152(b)(1) to avoid any uncertainty as to the application of the 30-day safe harbor in this situation.

A 30-day safe harbor time period is consistent with several current integration provisions that also require 30-day minimum waiting periods between offerings. For example, in conjunction with certain other requirements, Rule 155 requires an issuer to wait at least 30 days between an abandoned private offering and a subsequently registered offering,[81] or an

[77] As noted above, however, proposed Rule 152 would specify that the safe harbors are not available to any issuer for any transaction or series of transaction that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Securities Act.

[78] *See* Rule 502(a); Rule 251(c); Rule 147(g); and Rule 147A(g). These rules rely on a six-month time period, but offer exceptions for certain offers and sales under specific exemption or circumstances. For example, Rule 502(a) excludes offers or sales of securities under an employee benefit plan as defined in Rule 405. In addition, Rule 251(c), Rule 147(g), and Rule 147A(g) all exclude offers or sales from integration for all prior offers and sales of securities without regard to a time period so long as the prior offers and sales have terminated. Under Rule 147, Rule 147A, and Rule 251, subsequent offers and sales will not be integrated with offers and sales that are registered under the Securities Act, exempt from registration under Rule 701, Regulation A, Regulation S, or Section 4(a)(6) of the Securities Act, or made pursuant to an employee benefit plan. Further, generally, transactions otherwise meeting the requirements of an exemption will not be integrated with simultaneous offers and sales of securities being made outside the United States in compliance with Regulation S [17 CFR 230.901 through 230.905] *See* Rule 500(g); and Note to Rule 502(a).

[79] Both this proposed safe harbor and the safe harbor in proposed Rule 152(b)(3)(iii) would apply to a registered offering made more than 30 calendar days after the termination or completion of any other offering.

[80] *See* Regulation D Adopting Release, at text accompanying note 18. *See also* Proposed Revisions of Certain Exemptions from the Registration Provisions of the Securities Act of 1933 for Transactions Involving Limited Offers and Sales, Release No. 33–6339 (Aug. 7, 1981) [46 FR 41791 (Aug. 18, 1981)], at Section V.C.1 (referring to uniform six month safe harbor provisions in now rescinded Rules 146(b)(1) and 242(b)).

[81] *See* Rule 155(b). Rule 155(b) currently provides a safe harbor that a private offering of securities will not be considered part of an offering for which the issuer later files a registration statement if: (1) No securities were sold in the private offering; (2) the issuer and any person acting on its behalf terminate all offering activity in the private offering before the issuer files the registration statement; (3) the preliminary and final prospectuses used in the registered offering disclose specified information about the abandoned private offering (including: The size and nature of the private offering; the date on which the issuer abandoned the private offering; that any offers to buy or indications of interest given in the private offering were rejected or otherwise not accepted; and that the prospectus delivered in the registered offering supersedes any offering materials used in the private offering); and (4) the issuer does not file the registration statement until at least 30 calendar days after termination of all offering activity in the private offering, unless

Continued

abandoned registered offering followed by a subsequent private offering.[82] Similarly, Rule 255(e), Rule 147, and Rule 147A currently provide safe harbors from integration, if an issuer waits at least 30 days between the last solicitation of interest in a subsequently abandoned Regulation A offering, or the last offer made pursuant to Rule 147 or Rule 147A, and the filing of a subsequent registered offering.[83]

Commenters on the Concept Release[84] and others[85] have been generally supportive of shortening the six month time period in Rule 502(a) and expressed concern that the six-month integration safe harbor could inhibit issuers from meeting their capital needs.[86] Several of these commenters explicitly supported a 30-day safe harbor time period, while others supported other shortened time periods.[87] One commenter alternatively suggested that changes to the six-month time period in Rule 502(a) would be unnecessary if the integration analysis universally used the standards in Regulation A and Rules 147 and 147A.[88] In contrast, two commenters were opposed to changing the integration standards,[89] with one of those commenters expressly stating its opposition to shortening the six-month period in Rule 502(a).[90]

Having considered these comments, we believe that the current six-month safe harbor time period in Rules 502(a), 251(c), 147(g), and 147A(g) may be longer than necessary to protect investors and could inhibit issuers, particularly smaller issuers, from meeting their capital raising needs.[91] In our view, issuers seeking to register offerings under the Securities Act should be encouraged to do so, and we are mindful of the risk that offers made pursuant to an exemption shortly before a registration statement is filed could be viewed as conditioning the market for that registered offering. Accordingly, we are proposing to shorten the current six-month time frame in these rules to 30 days. We are not aware of issuers abusing the similar 30-day waiting periods in the current provisions of Rule 255(e) and Rules 147(h) and 147A(h). As a result, we believe that a 30-day waiting period or separation between offerings would be sufficient to prevent issuers from using a generally solicited exempt offering, such as an offering made in reliance on Rule 506(c), for the purposes of conditioning the market for a later registered offering. We further note that waiting less than 30 days before filing a subsequent registered offering would not necessarily result in integration or be considered as conditioning the market for the subsequent registered offering. Instead, such a determination would depend on the particular facts and circumstances surrounding the offerings.[92]

We are mindful that issuers may seek to undertake serial Rule 506(b) offerings each month, selling to up to 35 unique non-accredited investors in each offering, potentially resulting in unregistered sales of securities to hundreds of non-accredited investors in a year.[93] While recent data may suggest that shortening the safe harbor to 30-days is not likely to result in a large increase in the number of non-accredited investors participating in Rule 506(b) offerings,[94] we are

the issuer and any person acting on its behalf offered securities in the private offering only to persons who were (or who the issuer reasonably believes were) accredited investors or satisfy the knowledge and experience standard of Rule 506(b)(2)(ii).

[82] *See* Rule 155(c). Rule 155(c) currently provides that an offering for which the issuer filed a registration statement will not be considered part of a later commenced private offering if: (1) No securities were sold in the registered offering; (2) the issuer withdraws the registration statement under 17 CFR 230.477 (''Rule 477''); (3) neither the issuer nor any person acting on the issuer's behalf commences the private offering earlier than 30 calendar days after the effective date of withdrawal of the registration statement under Rule 477; (4) the issuer provides specified information about the private offering to each offeree in the private offering; and (5) any disclosure document used in the private offering discloses any changes in the issuer's business or financial condition that occurred after the issuer filed the registration statement that are material to the investment decision in the private offering.

[83] Rule 255(e) provides a safe harbor to issuers that file a registered offering after an abandoned Regulation A offering. Specifically, for solicitations of interest made in reliance on Regulation A to persons other than QIBs or IAIs, Rule 255(e) provides that an abandoned Regulation A offering will not be subject to integration with a subsequently filed registered offering, if the issuer waits at least 30 days between the last such solicitation of interest in the Regulation A offering and the filing of the registration statement with the Commission.

Rules 147(h) and 147A(h) provide safe harbors to issuers from integration with any subsequent registered offerings, if issuers make offers pursuant to these rules to persons other than QIBs and IAIs and the issuers or their agents wait at least 30 days between the last such offer made in reliance on these rules and the filing of the registration statement with the Commission.

As discussed below, we are proposing to replace the integration provisions of several Securities Act exemptions with references to proposed Rule 152. Solicitations of interest or offers made to persons other than QIBs or IAIs currently covered by the Rule 255(e), Rule 147(h) and Rule 147A(h) safe harbors would be covered by this proposed 30-day safe harbor, and solicitations of interest or offers limited to QIBs or IAIs currently covered by the Rule 255(e), Rule 147(h), and Rule 147A(h) safe harbors would be covered by proposed Rule 152(b)(3).

[84] *See* CCMC Letter; SIFMA Letter (suggesting that a 30-day period would allow issuers to raise capital as expeditiously as is required in today's market); and Dechert Letter (''Due to the very real and substantial impact of ceasing offering activities for any period of time, we believe that 30 days is sufficient to ensure that issuers do not abuse their ability to conduct separate offerings.'').

[85] *See* Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission (Apr. 23, 2006), *available at http://www.sec.gov/info/smallbus/acspc/acspcfinalreport.pdf* (''Final Report of the Advisory Committee on Smaller Public Companies''), at 94 (recommending that the Commission shorten the integration safe harbor from six months to 30 days). *See also* Regulation D Proposing Release, at Section II.C.

[86] *See* CCMC Letter; SIFMA Letter; Dechert Letter; Davis Polk Letter; letter from EquityZen Inc. dated September 30, 2019 (''EquityZen Letter''); and NYSBA Letter.

[87] *See* Davis Polk Letter (suggesting 90 days is appropriate, as it would provide additional flexibility, permitting issuers to rely on the safe harbor once every fiscal quarter, while still requiring issuers to wait a sufficient period of time before initiating a substantially similar offering in reliance on the safe harbor); EquityZen Letter (suggesting a 90-day period generally, and a 30-day period for inadvertent general solicitation activity); letter from Silicon Prairie Portal & Exchange, LLC dated September 24, 2019 (''Silicon Prairie Letter'') (suggesting a 90-day period); ABA Letter (suggesting a 90-day period); and NYSBA Letter (recommending a shorter period generally, and specifically suggesting a 45-day period in situations of inadvertent general solicitation activity).

[88] *See* CrowdCheck Letter.

[89] *See* PIABA Letter; and NASAA Letter.

[90] *See* PIABA Letter.

[91] *See* Rule 255(e) of Regulation A; Rule 147(h); Rule 147A(h); Regulation D Proposing Release; and Final Report of the Advisory Committee on Smaller Public Companies. Smaller issuers may face capital raising challenges because they are seeking relatively small amounts of capital. *See e.g.,* Transcript of SEC Small Business Capital Formation Advisory Committee (Nov. 12, 2019), *available at https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-111219.pdf,* at 15–62 (discussing the fact that transaction costs make raising amounts under $750,000 ''not worth it''); and Transcript of SEC Small and Emerging Companies Advisory Committee (Feb. 15, 2017), *available at https://www.sec.gov/info/smallbus/acsec/acsec-transcript-021517.pdf,* at 144–145 (indicating that it is easier for issuers to access $100 million of capital than amounts under $10 million).

[92] *See, e.g.,* 2015 Regulation A Release, at text accompanying note 178 (waiting less than the 30 days before a registered offering, as required in Rule 255(e), would not necessarily result in integration with a Regulation A offering, but would instead depend on the particular facts and circumstances, as explained in the Note to Rule 251(c)).

[93] In 2007, the Commission expressed this concern that such sales could result in large numbers of non-accredited investors failing to receive the protections of Securities Act registration. *See* Regulation D Proposing Release, at text accompanying note 134.

[94] Based on the analysis of Form D data on initial Form D filings, we estimate that in 2019, among all Rule 506(b) offerings by issuers other than pooled investment funds, approximately 4.45 percent of offerings included non-accredited investors. Among all Rule 506(b) offerings with non-accredited investors by issuers, other than pooled investment funds, the average (median) number of non-accredited investors was reported to be 6.7 (4.0), based on Form D filings in 2019. These estimates of the number of investors may represent a lower bound because they rely on available Form D filings, and because a final Form D upon the conclusion of an offering is not required to be filed.

proposing to amend Rule 506(b)(2)(i) to address this concern. Under the proposed rule, where an issuer conducts more than one offering under Rule 506(b), the number of non-accredited investors purchasing in all such offerings within 90 calendar days of each other would be limited to 35.[95] We preliminarily believe that this would protect against the possibility that an issuer could inappropriately make use of the proposed 30-day safe harbor to effectively conduct a public distribution of securities to non-accredited investors.

In conjunction with our proposal to amend Rule 152 to include a 30-day integration safe harbor and to shorten the integration safe harbor time period throughout Rules 502(a), 251(c), 147(g), and 147A(g) from six months to 30 days, we are also proposing to remove and reserve Rule 155. As proposed Rule 152(b)(1) would supersede the specific requirements in Rule 155 relating to the integration of abandoned offerings with subsequent offerings, other than the 30-day waiting period between the termination of an abandoned offering and the commencement of a subsequent offering.[96] Specifically, Rule 155(b) provides that an abandoned private offering of securities will not be considered part of an offering for which the issuer later files a registration statement if the offering meets certain enumerated conditions, including a requirement that the issuer does not file the registration statement until at least 30 calendar days after termination of all offering activity in the private offering, unless the issuer and any person acting on its behalf offered securities in the private offering only to persons who were (or who the issuer reasonably believes were) accredited investors or who satisfy the knowledge and experience standard of Rule 506(b)(2)(ii).[97] Rule 155(c) provides a similar safe harbor for a registered offering followed by a private offering of securities subject to a similar set of enumerated conditions, including the requirement that neither the issuer nor any person acting on the issuer's behalf commences the private offering earlier than 30 calendar days after the effective date of withdrawal of the registration statement.[98]

We received comments on the Concept Release that were generally supportive of either eliminating or shortening the 30-day time period in Rule 155.[99] One of these commenters suggested that elimination of certain of Rule 155's conditions would increase the likelihood of registration.[100] Other than the required 30-day waiting period between an abandoned and subsequent offering, we believe the list of conditions in Rule 155(b) and (c) is no longer warranted and may be eliminated without compromising investor protections for the same reasons that support our proposal to reduce the integration safe harbors from six months to 30 days. As we believe a 30-day time period between offerings, including if one is abandoned, establishes a more workable standard, without significantly compromising investor protections, we are proposing to remove and reserve Rule 155.

To provide greater certainty to issuers as to the availability of all of our proposed safe harbors that require the prior offering to be ''terminated or completed,'' [101] we are proposing that:

- Offerings of securities made under Section 4(a)(2), Regulation D, or Rule 147 or 147A would be considered ''terminated or completed,'' on the later of the date: (i) The issuer entered into a binding commitment to sell securities under the offering (subject only to conditions outside of the investor's control); or (ii) the issuer and its agents ceased efforts to make further offers to sell the issuer's securities.[102]
- Offerings under Regulation A would be considered ''terminated or completed'' upon the: (i) Withdrawal of an offering statement under Rule 259(a) of Regulation A; (ii) filing of a Form 1–Z with respect to that offering; (iii) declaration by the Commission that the offering statement has been abandoned under Rule 259(b) of Regulation A; or (iv) third anniversary of the initial qualification date of the offering statement, in the case of continuous or delayed offerings.
- Offerings under Regulation Crowdfunding would be considered ''terminated or completed'' upon the deadline of the offering identified in the offering materials pursuant to Rule 201(g) of Regulation Crowdfunding, or indicated by the Regulation Crowdfunding intermediary in any notice to investors delivered under Rule 304(b) of Regulation Crowdfunding.
- Offerings for which a Securities Act registration statement has been filed will be considered, for purposes of the proposed safe harbors, ''terminated or completed'' upon the: (i) Withdrawal of the registration statement after the Commission grants such application under Rule 477; (ii) filing of an amendment or supplement to the registration statement indicating that the registered offering has been terminated or completed and the deregistering of any unsold securities if required by Item 512(a)(3) of Regulation S–K; [103] (iii) entry of an order by the Commission declaring that the registration statement has been abandoned under Rule 479; or (iv) as set forth in Rule 415(a)(5).[104]

b. Rule 701, Employee Benefit Plans and Regulation S

We are proposing Rule 152(b)(2), which would provide a safe harbor for all offers and sales made in compliance with Rule 701, pursuant to an employee benefit plan, or made in compliance with Regulation S, regardless of when these offerings occur, including offers and sales made concurrently with other offerings.[105] Offers and sales pursuant to Rule 701 [106] and employee benefit plans are limited to investors, such as employees, consultants and advisors, with whom the issuer has written compensation plans or agreements. Given the privity between these investors and the issuer, these offers and sales may not raise the same level of investor protection concerns as offerings to other investors.

We are proposing a similar safe harbor for all offers and sales made in compliance with Regulation S, regardless of when the Regulation S offering occurs in relation to another domestic registered or exempt offering in the United States. In adopting Regulation S, the Commission stated

[95] Proposed Rule 506(b)(2)(i) provides that there are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer in offerings under this section in any 90 calendar day period. Under Rule 501(e), only non-accredited investors are included in computing the number of ''purchasers.''

[96] Rule 155(b) and (c) currently provide safe harbors for integration of abandoned offerings. 17 CFR 230.155(b) and (c).

[97] *See supra* note 81.

[98] *See supra* note 82.

[99] *See* ABA Letter; and NYSBA Letter.

[100] *See* ABA Letter.

[101] *See* proposed Rule 152(b)(1), (b)(3) and (b)(4).

[102] Efforts to sell securities through the offering include, but are not limited to, the distribution of any offering materials. For purposes of exemptions permitting the use of general solicitation, the cessation of selling efforts would require the removal of any publicly available general solicitation materials, to the extent possible.

[103] 17 CFR 229.512(a)(3).

[104] 17 CFR 230.415(a)(5).

[105] The safe harbor integration provisions in current Rule 251(c) and Rules 147(g) and 147A(g) for these offers or sales do not cover offers or sales concurrent with another offering.

[106] The Rule 701 exemption is only available to issuers that are not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934. *See* Rule 701(b). This proposed safe harbor is in accord with Rule 701(f), which provides that an offering under Rule 701 will not be integrated with any other offering, as offers and sales exempt under Rule 701 are deemed to be a part of a single, discrete offering and are not subject to integration with any other offers or sales, whether registered under the Securities Act or otherwise exempt from the registration requirements of the Securities Act.

that ''[o]ffshore transactions made in compliance with Regulation S will not be integrated with registered domestic offerings or domestic offerings that satisfy the requirements for an exemption from registration under the Securities Act.'' [107] Proposed Rule 152(b)(2) would codify this position. Specifically, concurrent offshore offerings that are conducted in compliance with Regulation S are not currently, and would not be, integrated with registered domestic offerings or domestic offerings that are conducted in compliance with any exemption. When determining the availability of this safe harbor, it would still be necessary to assess each transaction for compliance with Regulation S and the conditions of the other exemption.

Although, as noted above, the Commission has provided guidance similar to the proposed safe harbor, we have become aware that there may be some uncertainty among market participants about whether it is possible to conduct concurrent Regulation S and Rule 506(c) offerings, particularly when the offerings are conducted using the internet, and if so, how to comply with the requirement that separate offering materials be used in each offering. Two commenters on the Concept Release suggested that the Commission clarify that general solicitation under Rule 506(c) would not constitute ''directed selling efforts'' for purposes of Regulation S,[108] which Rule 902(c) defines as any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for securities offered in reliance on Regulation S.[109]

In light of these concerns, we are proposing amendments to Regulation S that would permit an issuer that is conducting an exempt offering that allows general solicitation, such as under Rule 506(c), and uses widely accessible internet or similar communications, to continue to be able to rely on Regulation S for a concurrent offshore offering even though the general solicitation activity would likely be deemed ''directed selling efforts'' under current Rule 902(c). Under the proposal, an issuer that engages in general solicitation activity under an exemption that allows general solicitation would not be considered to have engaged in ''directed selling efforts'' in connection with an offering under Regulation S, if the general solicitation activity is not undertaken for the purpose of conditioning the market in the United States for any of the securities being offered in reliance on Regulation S. The definition of ''directed selling efforts'' currently covers any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for the Regulation S securities. Due to the nature of a widely accessible general solicitation communication, it is likely that the ''reasonably be expected to have the effect of'' provision would be implicated by such activity, even though the issuer may not have undertaken the activity ''for the purpose of'' conditioning the U.S. market. Under the proposal, this definition would be narrowed, only for the purposes of general solicitation activities undertaken in connection with offers and sales under an exemption from registration, such that general solicitation activity that may have the effect of conditioning the U.S. market but is not undertaken for the purpose of doing so would not be covered.

We are mindful that, regardless of the issuer's intent, such activities may increase the risk of flowback of the Regulation S securities to the United States when there is a concurrent exempt offering of the securities in the United States using general solicitation. Therefore, we are proposing new Rule 906 of Regulation S, applicable to securities offered and sold in a transaction subject to the conditions of Rule 901 or Rule 903, that would require an issuer that engages in general solicitation activity covered by the proposed exclusion from the definition of ''directed selling efforts'' to prohibit resales to U.S. persons (or for the account or benefit of a U.S. person) of the Regulation S securities for a period of six months from the date of sale except to QIBs or IAIs. We preliminarily believe that this restriction on resales would appropriately guard against potential flowback of such securities to the United States. We are proposing to limit resales during the six-month period to QIBs and IAIs, investors that the Commission has long recognized as having the ability to fend for themselves. This approach may help alleviate possible concerns about less-sophisticated investors not fully appreciating the distinctions between the securities sold in each of the offerings, and help guard against flowback to the United States by limiting the potential pool of investors who may purchase in the resale. This six-month limitation on resales would apply regardless of the Regulation S category applicable to the securities, and notwithstanding, and in addition to, any applicable distribution compliance period.[110]

c. Subsequent Registered Offerings

The safe harbor in proposed Rule 152(b)(3) would provide a safe harbor for certain offerings made prior to the commencement of an offering for which a Securities Act registration statement has been filed. Proposed Rule 152(b)(3)(i) would provide that an offering for which a Securities Act registration statement has been filed will not be integrated with terminated or completed offerings for which general solicitation is not permitted.[111] Proposed Rule 152(b)(3)(ii) would provide that an offering for which a Securities Act registration statement has been filed will not be integrated with a terminated or completed offering for which general solicitation is permitted made only to QIBs and IAIs.[112] Finally, Proposed Rule 152(b)(3)(iii) would make clear that an offering for which a registration statement under the Securities Act has been filed will not be integrated with any offering for which general solicitation is permitted that terminated or completed more than 30

[107] *See* Offshore Offers and Sales, Release No. 33–6863 (April 24, 1990) [55 FR 18306 (May 2, 1990)], at Section III.C.1. In addressing the offshore transaction component of the Regulation S safe harbor, the Commission stated, ''Offers made in the United States in connection with contemporaneous registered offerings or offerings exempt from registration will not preclude reliance on the safe harbors.'' *Id.* at note 36. Likewise, in addressing directed selling efforts, the Commission stated, ''Offering activities in contemporaneous registered offerings or offerings exempt from registration will not preclude reliance on the safe harbors.'' *Id.* at note 47. *See also* Rule 500(g) of Regulation D (formerly Preliminary Note No. 7 to Regulation D) (''Regulation S may be relied upon for such offers and sales even if coincident offers and sales are made in accordance with Regulation D inside the United States.''); and Note to Rule 502(a) (''Generally, transactions otherwise meeting the requirements of an exemption will not be integrated with simultaneous offerings being made outside the United States in compliance with Regulation S.'').

[108] *See* CoinList Letter; and NYSBA Letter.

[109] *See* Rule 902(c)(1).

[110] *See* Rule 902(f).

[111] Proposed Rule 152(b)(3)(i) builds on the Commission's existing integration guidance relating to offerings for which general solicitation is not permitted. Offers and sales preceding registered offerings that do not involve general solicitation are generally not the type of offerings that, when taken together, appear to be susceptible to concerns relating to the prior offers and sales conditioning the market for the registered offering.

[112] Proposed Rule 152(b)(3)(ii) builds on current Rule 255(e) of Regulation A, and current Rules 147(h) and 147A(h), which provides that offerings limited to QIBs and IAIs are not integrated with a subsequently filed registered offering. Similarly, where an issuer has solicited interest in a contemplated, but subsequently abandoned Regulation A offering only to QIBs or IAIs, the abandoned Regulation A offering would not be subject to integration with a subsequently filed registered offering.

calendar days prior to the registered offering.[113]

Rule 152 currently provides that the phrase ''transactions by an issuer not involving any public offering'' in Section 4(a)(2) shall be deemed to apply to transactions that did not involve any public offering at the time of the unregistered offering even though the issuer decides subsequently to make a public offering and/or files a registration statement. In 2007, the Commission clarified that an issuer's contemplation of filing a Securities Act registration statement at the same time that it is conducting an unregistered offering under Section 4(a)(2) would not cause the Section 4(a)(2) exemption to be unavailable for that unregistered offering.[114] So long as all of the applicable requirements of the exemption prohibiting general solicitation were met for offers and sales that occurred prior to the general solicitation, those offers and sales would not be integrated with the subsequent registered offering.[115] Once the public offering is commenced or the registration statement is filed, the issuer must satisfy all of the applicable requirements for that subsequent offering.

We continue to believe that capital raising around the time of a public offering, in particular an initial public offering, including immediately before the filing of a registration statement, often is critical if companies are to have sufficient funds to continue to operate while the public offering process is ongoing.[116] We believe that Rule 152 as currently written is unnecessarily restrictive, given the changing financial requirements and circumstances of issuers, particularly smaller issuers, immediately prior to a registered public offering and may be revised without compromising investor protections. A lengthy waiting period prior to a registered offering combined with a potentially uncertain registration process are particular concerns for smaller issuers contemplating a registered public offering, whose financing needs are often erratic and unpredictable, due in part to limited amounts of working capital, cash reserves, and access to credit.[117] For this reason, we are proposing Rule 152(b)(3), which would permit companies to conduct offerings shortly before the filing of a Securities Act registration statement without concern that the two offerings would be integrated.

d. Offers or Sales Preceding Exempt Offerings Permitting General Solicitation

Proposed Rule 152(b)(4) would provide a safe harbor for all offers and sales made in reliance on an exemption for which general solicitation is permitted that follow any other terminated or completed offering. Rule 251(c) of Regulation A, Rule 147(g), and Rule 147A(g) currently provide that offers and sales made in reliance on these exemptions will not be integrated with terminated or completed offers and sales made prior to the commencement of these exempt offerings.[118] We are proposing to establish a new safe harbor that would expand these current integration safe harbors in Regulation A and Rules 147 and 147A to also include offerings relying on: Regulation Crowdfunding; Rule 504(b)(1)(i), (ii) or (iii) that, depending upon state registration requirements, permit general solicitation; and Rule 506(c). The following table summarizes the types of offerings that would not be integrated under this proposed safe harbor:

TABLE 6—SUMMARY OF TYPES OF OFFERINGS NOT INTEGRATED UNDER THE SAFE HARBOR

Offering 1	Offering 2
Exempt offering permitting general solicitation, including: • Regulation A • Regulation Crowdfunding • Rule 147 or 147A • Rule 504(b)(1)(i), (ii), or (iii) • Rule 506(c)	Exempt offering prohibiting general solicitation, including: • Regulation A • Regulation Crowdfunding • Rule 147 or 147A • Rule 504(b)(1)(i), (ii), or (iii) • Rule 506(c)
Exempt offering permitting general solicitation, including: • Rule 504(b)(1) • Rule 506(b) • Section 4(a)(2) Securities Act registered offering.	

Offers and sales preceding exempt offerings that permit general solicitation are generally not the type of offerings that, when taken together, appear to be susceptible to concerns relating to the prior offers and sales conditioning the market for the subsequent exempt offering. We do not believe integrating any type of offers or sales with a subsequent exempt offering permitting general solicitation, such as an offering pursuant to Regulation A, Rule 147, Rule 147A, Rule 504(b)(1)(i), (ii) or (iii), Rule 506(c) or Regulation Crowdfunding, is necessary to further investor protection. For example, a subsequent Regulation A or Regulation Crowdfunding offering would provide investors in these offerings with an offering document and ongoing disclosures to provide them with material information about the offering prior to making their investment decision. Similarly, intrastate offerings pursuant to Rule 147 and Rule 147A, as well as regional multi-state offerings under Rule 504(b)(1)(i), (ii) and (iii), are all subject to state registration requirements which generally require the delivery of a disclosure document prior to sale. Finally, Rule 506(c) requires issuers to take reasonable steps to verify that all investors in the offering are accredited investors who are deemed to be sophisticated investors who do not need the protections of Securities Act registration.

3. Conforming Amendments to Securities Act Exemptions

As part of our effort to modernize and harmonize the integration framework for registered and exempt offerings, we are also proposing to replace the integration provisions of several Securities Act exemptions with references to proposed Rule 152. Specifically, we are proposing to amend current Rule 502(a), Rule 251(c), Rule 147(g), and Rule 147A(g) to provide cross-references to the new facts and circumstances analysis and safe harbors for integration in Rule 152. We are additionally proposing to eliminate Rule 255(e), Rule 147(h), and Rule 147A(h) since the relief provided by these rules would be provided by

[113] Proposed Rule 152(b)(3)(iii) would work in coordination with proposed Rule 152(b)(1) to clarify the application of the 30-day safe harbor to subsequent registered offerings.

[114] *See* Regulation D Proposing Release, at text accompanying note 124. *See also* Concept Release, at text accompanying note 499.

[115] In these circumstances, companies should be careful to avoid any pre-filing communications regarding the contemplated public offering that could render the Section 4(a)(2) exemption unavailable for what would be an otherwise exempt private placement. *See* Regulation D Proposing Release, at note 124.

[116] *Id.* at Section II.C.

[117] *See, e.g.,* Final Report of the Advisory Committee on Smaller Public Companies, at page 96. *See also* Regulation D Proposing Release, at note 116 and accompanying text.

[118] These integration provisions also provide that offers and sales subsequent to these exempt offerings will not be integrated if they are: (1) Registered under the Securities Act; (2) exempt from registration under Rule 701; (3) made pursuant to an employee benefit plan; (4) exempt from registration under Regulation S; (5) exempt from registration under Section 4(a)(6) of the Securities Act; (6) made more than six months after completion of the offering; or (7) limited to QIBS and IAIs. *See* Rule 251(c); Rule 255(e); Rule 147(g) and (h); and Rule 147A(g) and (h).

proposed Rule 152(b)(3). All of these existing integration provisions currently refer to a facts and circumstances analysis when their enumerated safe harbors do not apply, and the proposed Rule 152(b) safe harbors are generally consistent with the current safe harbors in the individual rules.

Although Regulation Crowdfunding has no codified integration provision, in the 2015 adopting release, the Commission provided guidance on integration using the same facts and circumstances analysis set forth in the Commission's 2015 amendments to Regulation A and 2016 amendments to Rule 147 and adoption of new Rule 147A.[119] Market participants conducting crowdfunding offerings have requested guidance on the integration of crowdfunding offerings with other exempt offerings under the Securities Act.[120] In response, we are proposing to amend Rule 100 of Regulation Crowdfunding to codify this integration guidance, and further harmonize how offerings under Regulation Crowdfunding interrelate with other offerings under the Securities Act by cross-referencing the proposed Rule 152(b) safe harbors. We believe codifying the Commission's guidance on integration by adding the cross-reference to proposed Rule 152 in a new provision in Rule 100 of Regulation Crowdfunding would provide greater certainty to issuers contemplating a Regulation Crowdfunding offering who may also be considering other offerings under the Securities Act.

Request for Comment

1. Should we adopt a comprehensive integration framework for registered and exempt offerings, as proposed? Is the proposed general principle of integration, which requires an issuer to consider the particular facts and circumstances of each offering, appropriate? Should the framework also include provisions applying this general principle to particular fact patterns? If so, are the proposed provisions appropriate? Are there other provisions applying the general principle to specific fact patterns that we should include? In light of the proposed provisions, should the rules define the terms ''pre-existing'' and ''substantive relationship''? Should we instead eliminate the concept of integration altogether and rely on general anti-evasion principles to prohibit the use of multiple closely-timed offerings to evade the securities laws?

2. Should we replace the five factor test of integration, currently set forth in Rule 502(a), with the more recent approach to integration adopted in rulemakings involving Regulation A, Regulation Crowdfunding, and Rules 147 and 147A, as proposed? Is there another integration principle that should apply in this context? Are there situations in which the five factor test should continue to apply? If so, should the current factors be revised, such as by adding new factors, or should we provide guidance with respect to the relative importance of the factors to the analysis? Are there uses of the five factor test for purposes other than the integration of offerings?

3. Should we adopt specific safe harbors as part of the proposed integration framework? If so, are the proposed safe harbors appropriate? Are there additional or different safe harbors we should codify? What effect, if any, would the proposed safe harbors have on investor protection or on issuers' ability to raise capital in the exempt offering markets? Should any of the integration provisions in proposed Rule 152(a) be reframed as safe harbors in proposed Rule 152(b)? Similarly, should any of the safe harbors in proposed Rule 152(b) be reframed as principles of integration in proposed Rule 152(a)?

4. Do the proposed rules make clear the interaction between the integration provisions set forth in proposed Rule 152(a) and the non-exclusive safe harbors set forth in proposed Rule 152(b)?

5. Should we include an integration safe harbor that would apply to any offering made more than 30 calendar days prior to, or more than 30 calendar days after, another offering, as proposed? Is this time period too short? Would a longer time period such as 45, 90, or 120 days be more appropriate? Would this proposal raise any investor protection concerns?

6. Should we, as proposed, amend Rule 506(b) to provide that where an issuer conducts more than one offering under Rule 506(b), the number of non-accredited investors purchasing in all such offerings within 90 calendar days of each other would be limited to 35? If so, is the proposed timeframe (90 days) and number of purchasers (35) appropriate, or should these be revised? Should we instead, if we consider 35 non-accredited investors over a 90-day period to be an appropriate limitation, set the safe harbor at 90 days to simplify compliance? Do the risks of sales to large numbers of non-accredited investors in multiple offerings by the same issuer in reliance on Rule 506(b) warrant such limits on the number of non-accredited investors participating in these offerings? Should this limitation apply in all cases in which an issuer conducts more than one offering under Rule 506(b), or should we only require such limit on the number of non-accredited investors if the Rule 506(b) offerings are of the same class of securities, or part of the same plan of financing? Should we only require such limit on the number of non-accredited investors if the Rule 506(b) offerings would be integrated if the five factor test were applied? Alternatively, instead of amending Rule 506(b), should we include this requirement as a condition to reliance on the proposed 30-day safe harbor when an issuer conducts two or more Rule 506(b) offerings?

7. Should we, as proposed, condition the availability of the 30-day safe harbor on the requirement that, for an exempt offering for which general solicitation is not permitted, the purchasers in such offering were not solicited through the use of general solicitation or that the purchasers established a substantive relationship with the issuer prior to commencement of the offering for which general solicitation is not permitted? Alternatively, is a provision similar to that in proposed Rule 152(b)(1) more appropriate in Rule 502(c) of Regulation D concerning purchasers in offerings for which general solicitation is not permitted? Should the provision be included in both proposed Rule 152(b)(1), as well as in Rule 502?

8. Should we adopt an integration safe harbor for all offerings made in compliance with Rule 701, pursuant to an employee benefit plan, or in compliance with Regulation S, as proposed?

9. Is it necessary to reference Rule 701 in proposed Rule 152(b)(2), given the integration provision in Rule 701(f)?

10. Should general solicitation in the United States in connection with an exempt, U.S. offering constitute directed selling efforts under Rule 902(c)(1) of Regulation S for purposes of the offshore transaction? Should we, as proposed, amend the definition of ''directed selling efforts'' to permit issuers to make concurrent offers under Regulation S and an exemption from registration that permits general solicitation? Should we expand the

[119] Securities Act Section 4A(g) states that ''[n]othing in the exemption shall be construed as preventing an issuer from raising capital through means other than [S]ection 4(a)(6).'' Given this statutory language, the Commission provided guidance in the Crowdfunding Adopting Release that an offering made in reliance on Section 4(a)(6) is not required to be integrated with another exempt offering made by the issuer to the extent that each offering complies with the requirements of the applicable exemption that is being relied on for that particular offering. *See* Crowdfunding Adopting Release, at text accompanying notes 1343–1344.

[120] *See, e.g.,* 2018 Forum Report.

definition of ''directed selling efforts'' to also exclude activities that would be ''reasonably expected to'' condition the U.S. market, regardless of the intent of those activities? Would an issuer be able to demonstrate the intent underlying general solicitation activities under the proposed amendment? Would the proposed amendments provide sufficient clarity to issuers using social media to make concurrent U.S. and non-U.S. offerings? In such situations, would an issuer have difficulty separately complying with Regulation S and other exemptions? Do the proposed amendments to Regulation S raise investor protection concerns for offshore investors? Should we expand the proposed exclusion from ''directed selling efforts'' to apply not only to concurrent exempt offerings that permit general solicitation, but also to domestic registered offerings?

11. Should we require the resale restrictions of proposed Rule 906? Will proposed Rule 906 help prevent flowback of securities to the United States? Is the proposed six-month time period appropriate, or should we consider a longer or shorter time period for the resale restriction to apply? Should the time period during which resales are restricted instead correspond to the distribution compliance period for Category 2 or Category 3 offerings under Regulation S, as applicable? Should we permit resales to QIBs and IAIs during this six-month period, as proposed? We expect that issuers would consider implementing measures similar to the ''offering restrictions'' defined in Rule 902(g) to comply with the proposed Rule 906 resale restriction, but should we specify measures an issuer must take to comply with the proposed resale restrictions? If so, what type of measures would be appropriate? Are the proposed definition of ''directed selling efforts'' and new Rule 906 in keeping with the territorial approach taken in Regulation S?

12. Should we adopt the safe harbor in proposed Rule 152(b)(3) that applies to registered offerings subsequent to a terminated or completed offering for which general solicitation was not permitted, as proposed? Should we also, as proposed, include a safe harbor that applies to registered offerings subsequent to a terminated or completed offering limited to QIBs and IAIs? Should we additionally include a safe harbor that applies to registered offerings subsequent to offerings for which general solicitation is permitted that terminated or completed more than 30 days prior? Do the safe harbors, as proposed, sufficiently cover the relief provided by Rule 255(e) of Regulation A, Rule 147(h), and Rule 147A(h) so as to make them no longer necessary? Alternatively, should we omit the provision in this safe harbor concerning Rules 255(e), 147(h), and 147A(h), and retain these integration provisions as currently provided in Rules 255, 147, and 147A? Would this help simplify the safe harbor in proposed Rule 152(b)(3)? Would this make the integration provisions of Rules 255, 147, and 147A less clear? Does the 30 calendar day provision in proposed Rule 152(b)(3)(iii) for registered offerings appropriately coordinate with the more general provisions of proposed Rule 152(b)(1)? In addition to registered offerings, should we revise this safe harbor provision to cover exempt offerings permitting general solicitation, such as Rule 506(c), as well?

13. Should we adopt the safe harbor in proposed Rule 152(b)(4) that would apply to any offering in reliance on an exemption for which general solicitation is permitted made subsequent to an offering that has been terminated or completed?

14. Should we include any other safe harbors from integration in Rule 152? For example:

a. Should we include a safe harbor for all offers or sales to investors with whom the issuer has a pre-existing substantive relationship? Should this safe harbor be available for all such offers or sales, regardless of when they occur in relation to another offering (*i.e.,* whether prior to, concurrent with, or subsequent to another offering) and regardless of whether the other offering is exempt or registered? If we were to adopt such a safe harbor, would that make any of the proposed safe harbors unnecessary?

b. Should we include a safe harbor from integration for all offerings limited to QIBs and accredited investors? Should such a safe harbor include offers or sales preceding or concurrent with a registered offering? Alternatively should such a safe harbor apply only to QIBs and IAIs, regardless of whether the offer or sale was prior to, concurrent with, or subsequent to other offerings? Do offers and sales to such investors raise concerns with respect to conditioning the market for a subsequent registered offering of the issuer's securities?

c. Should we include a safe harbor available for offers or sales made in reliance on Rule 506(c) that are made concurrently with an exempt offering permitting general solicitation, such as in reliance on Regulation A, Regulation Crowdfunding or Rule 147A, provided that, if the general solicitation materials used in connection with the Rule 506(c) offering include the material terms of the other concurrent exempt offering permitting general solicitation, then the Rule 506(c) materials must conform to the legend and other requirements of the other exempt offering permitting general solicitation? In this regard, is our proposed Rule 152(a)(2) more appropriate as a safe harbor or as an integration principle?

15. Instead of our proposed approach to replace the current integration provisions in Securities Act exemptions with a cross-reference to proposed Rule 152, should we revise the current integration provisions to reflect the provisions of proposed Rule 152? Alternatively, should we revise the current safe harbor provisions in the Securities Act exemptions to reflect the safe harbor provisions of proposed Rule 152(b) and provide cross-references to Rule 152(a) for guidance on integration when these safe harbors are not applicable?

16. Should we codify in Regulation Crowdfunding the Commission's existing integration guidance providing that offers and sales made in reliance on Regulation Crowdfunding will not be integrated with other exempt offerings made by the issuer, provided that each offering complies with the requirements of the applicable exemption that is being relied upon for the particular offering in Rule 100 of Regulation Crowdfunding, as proposed?

17. Should we define the terms ''terminated or completed,'' as proposed? Should the analysis of whether an offering is ''terminated or completed'' be predicated on the issuer's entry into a binding commitment, subject only to conditions outside of the investor's control, to sell securities under the offering, as proposed, or should we consider an alternative such as the closing of the final sale of securities under the offering? Are there any administrative or logistical issues that would be raised if the ''termination or completion'' of an offering were determined based on the closing of the final sale of securities under the offering? Should anything else be considered ''terminated or completed'' with respect to offerings under Regulation A and Regulation Crowdfunding, and registered offerings?

18. Should we consider revisions to Regulation Crowdfunding that relate to intermediaries in light of the proposed integration safe harbors? For example, should we revise the portal requirements under Regulation Crowdfunding to permit concurrent Rule 506(c) offerings to be offered and sold via a portal's internet platform? What other Regulation Crowdfunding rules should be revised to facilitate Rule

506(c) offerings concurrent with Regulation Crowdfunding offerings? Should we provide guidance regarding issues that may arise when an intermediary seeks to host concurrent offerings? Should we expand any of our rules, for example, the rules under Regulation Crowdfunding, to permit certain entities to act as intermediaries for sales of securities to accredited investors in concurrent Rule 506(c) offerings?

B. General Solicitation and Offering Communications

Section 4(a)(2) of the Securities Act exempts from the registration requirements ''transactions by an issuer not involving any public offering,'' [121] but does not define the phrase. The precise limits of this statutory exemption are also not defined by rule. Whether a transaction is one not involving any public offering is essentially a question of fact and necessitates a consideration of the surrounding circumstances, including such factors as the relationship between the offerees and the issuer, and the nature, scope, size, type, and manner of the offering.[122] An issuer relying on Section 4(a)(2) is restricted in its ability to make public communications to attract investors to its offering because public advertising is incompatible with a claim of exemption under Section 4(a)(2).[123]

The Commission adopted Rule 506 of Regulation D as a non-exclusive safe harbor under Section 4(a)(2), providing objective standards on which an issuer could rely to meet the requirements of the Section 4(a)(2) exemption.[124] This included a prohibition on the use of general solicitation or advertising to market the securities. In 2012, Section 201(a) of the JOBS Act directed the Commission to eliminate the prohibition on using general solicitation in offerings under Rule 506 where all purchasers of the securities are accredited investors and the issuer takes reasonable steps to verify that the purchasers are accredited investors.[125] To implement Section 201(a), the Commission adopted paragraph (c) of Rule 506, and retained the prior Rule 506 safe harbor as paragraph (b).[126] As a result, general solicitation or advertising continues to be prohibited in an offering under Rule 506(b).

1. Exemption From General Solicitation for ''Demo Days'' and Similar Events

The Securities Act defines, and the Commission has historically interpreted, the term ''offer'' broadly.[127] The Commission has explained that ''the publication of information and publicity efforts, made in advance of a proposed financing which have the effect of conditioning the public mind or arousing public interest in the issuer or in its securities constitutes an offer.'' [128] Although the terms ''general solicitation'' and ''general advertising'' are not defined in Regulation D, Rule 502(c) does provide examples of general solicitation and general advertising, including advertisements published in newspapers and magazines, communications broadcast over television and radio, and seminars where attendees have been invited by general solicitation or general advertising.[129] The Commission has stated that other uses of publicly available media, such as unrestricted websites, also constitute general solicitation and general advertising.[130] In this release, we refer to both general solicitation and general advertising as they relate to an offer of securities as ''general solicitation.''

Commenters have raised questions about issuers that present to potential investors at ''demo days'' and similar events.[131] These events are generally organized by a group or entity (such as a university, angel investors, an accelerator, or an incubator) that invites issuers to present their businesses to potential investors, with the aim of securing investment. If the issuer's presentation at a ''demo day'' or similar event constitutes an offer of securities, the issuer would not be deemed to have engaged in general solicitation if the organizer of the event has limited participation in the event to individuals or groups of individuals with whom the issuer or the organizer has a pre-existing substantive relationship or that have been contacted through an informal, personal network of experienced, financially sophisticated individuals, such as angel investors.

However, we understand that in many cases it may not be practical for the organizer of the event to limit participation in this manner. As a result, we are proposing Rule 148, which would provide that certain ''demo day'' communications would not be deemed general solicitation or general advertising.[132] Specifically, as proposed, an issuer would not be deemed to have engaged in general solicitation if the communications are made in connection with a seminar or meeting by a college, university, or other institution of higher education, a local government, a nonprofit organization, or an angel investor group, incubator, or accelerator sponsoring the seminar or meeting.[133]

With respect to the organization and conduct of the event, the sponsor would not be permitted to make investment recommendations or provide investment advice to attendees of the event, nor would it be permitted to engage in any investment negotiations between the issuer and investors attending the event. The sponsor would not be permitted to

[121] 15 U.S.C. 77d(a)(2).

[122] *See* Non-Public Offering Exemption Release. Section 4(a)(2) was traditionally viewed as a way to provide ''an exemption from registration for bank loans, private placements of securities with institutions, and the promotion of a business venture by a few closely related persons.'' *Id.* In 1962, prompted by increased use of the exemption for speculative offerings to unrelated and uninformed persons, the Commission clarified limitations on the exemption's availability. *See id.*

[123] *See id.*

[124] *See* Regulation D Adopting Release, at Section III.C. Attempted compliance with any rule in Regulation D does not preclude an issuer from claiming the availability of another applicable exemption. For example, an issuer's failure to satisfy all the terms and conditions of Rule 506(b) does not raise a presumption that the exemption provided by Section 4(a)(2) is not available. *See* Rule 500(c).

[125] Sec. 201(a), Public Law 112–106, 126 Stat. 306 (Apr. 5, 2012).

[126] *See* Rule 506(c) Adopting Release.

[127] *See* Securities Offering Reform, Release No. 33–8591 (July 19, 2005) [70 FR 44722 (Aug. 3, 2005)] (''Securities Offering Reform Release''), at note 88 (''The term 'offer' has been interpreted broadly and goes beyond the common law concept of an offer.'') (*citing Diskin* v. *Lomasney & Co.,* 452 F.2d 871 (2d. Cir. 1971) and *SEC* v. *Cavanaugh,* 1 F. Supp. 2d 337 (S.D.N.Y. 1998)). *See also* Section 2(a)(3) of the Securities Act (noting that an offer includes every attempt to dispose of a security or interest in a security, for value; or any solicitation of an offer to buy a security or interest in a security).

[128] *See* Securities Offering Reform Release.

[129] *See* Rule 502(c).

[130] *See* Use of Electronic Media for Delivery Purposes, Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)], at Section II.A.D; and Use of Electronic Media Release, at Section II.C.2.

[131] *See* CCMC Letter (stating that ''the SEC should clarify that startups and angel investors are permitted to participate in ''demo days'' or other publicity events in which companies serially present to audiences that may include potential investors but for which no specific investment solicitation is made''); and letter from Investment Adviser Association dated October 18, 2019 (''IAA Letter'') (suggesting that the Commission ''should clarify that limited communications designed for consumption by a non-public audience (such as institutional publications or institutionally focused consultant databases), or participation in a 'demo day' or similar event, would not be considered general solicitation or general advertising'').

[132] Because communications that comply with proposed Rule 148 would not be deemed a general solicitation or general advertising, the limitations on the manner of offering in Rule 502(c) of Regulation D would be inapplicable.

[133] A proposed Instruction to Rule 148 would provide that for purposes of the rules the term ''angel investor group'' means a group: (A) Of accredited investors; (B) that holds regular meetings and has written processes and procedures for making investment decisions, either individually or among the membership of the group as a whole; and (C) is neither associated nor affiliated with brokers, dealers, or investment advisers.

charge attendees of the event any fees, other than reasonable administrative fees, or receive any compensation for making introductions between attendees and issuers, or for investment negotiations between the parties. The sponsor also would not be permitted to receive any compensation with respect to the event that would require it to register as broker or dealer under the Exchange Act, or as an investment adviser under the Advisers Act.

In addition, the proposed rule would specify that the advertising for the event may not reference any specific offering of securities by the issuer and that the information conveyed at the event regarding the offering of securities by the issuer is limited to:

- Notification that the issuer is in the process of offering or planning to offer securities;
- The type and amount of securities being offered; and
- The intended use of the proceeds of the offering.

We believe that this tailored approach, which limits the types of organizations that may sponsor events and the scope of the sponsor's activities, coupled with the limitation on the information about a securities offering that an issuer is permitted to provide at the event, appropriately provides for investor protection while permitting issuers, particularly small and emerging issuers, and investors, the opportunity to more efficiently expand and grow their networks. For issuers that have been reported to have historically had less access to capital at start up, this approach may offer an opportunity to help bridge any funding gaps by allowing them to reach broader audiences.[134]

In light of recent developments in the capital markets, including the adoption of Rule 506(c), as well as developments in communications and technology, we considered, but are not proposing at this time, adding revised examples of general solicitation to our rules. Furthermore, several commenters on the Concept Release, as well as the SEC Small Business Capital Formation Advisory Committee, have suggested that further guidance and clarification as to the types of communications that classify as ''general solicitation'' and ''general advertising'' would be helpful.[135]

As a result, we considered whether to update and expand the current Rule 502(c) examples of general solicitation by adding examples to a new rule outside of Regulation D, deleting the current examples from Rule 502(c) and including a reference in Rule 502(c) to the new rule. For example, we considered stating in the new rule that an issuer would be considered to be engaging in general solicitation if, among other things, the issuer or any person acting on the issuer's behalf uses one or more of the following methods of communication to offer securities:

- Any advertisement, article, notice or other communication published on a publicly available website or mobile application, including social media, published in any newspaper, magazine, or similar media, or broadcast over television, radio or a similar medium;
- Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising, other than certain ''demo day'' activities covered by proposed Rule 148; or
- Any form of direct mail, telephone, email, text messaging, or similar method of communication, if the issuer (or any underwriter, broker, dealer, or agent acting on behalf of the issuer) does not have a pre-existing, substantive relationship with the offerees, or cannot otherwise demonstrate the absence of a general solicitation.

This approach would encompass present day communication methods that did not exist at the time of Rule 502(c)'s adoption, such as websites, social media, texts, and email, and would clarify that cold calling and other similar methods of communication that do not involve the use of mass media may still be considered general solicitation if the issuer or its agent does not have a pre-existing, substantive relationship with the offerees, or cannot otherwise demonstrate the absence of a general solicitation.

We note the existence of a pre-existing, substantive relationship is not the exclusive means of demonstrating the absence of a general solicitation. For example, an issuer may also demonstrate the absence of a general solicitation by limiting its communications to direct contact by the issuer or its agents outside of a public offering effort. In addition, groups of experienced, sophisticated investors, such as ''angel investors,'' may share information about offerings through their network and members who have a relationship with a particular issuer may introduce that issuer to other members. Issuers that contact one or more experienced, sophisticated members of the group through this type of referral may be able to establish a reasonable belief that other offerees in the network have the necessary financial experience and sophistication.

Request for Comment

19. Should we, as proposed, provide a specific exception for communications in connection with a ''demo-day'' or similar event so that it would not be considered general solicitation if certain conditions are met? Should we permit organizations other than those listed in proposed Rule 148 to act as sponsors of such events? An instruction to the proposed rule provides that the term ''angel investor group'' means a group that is composed of accredited investors that holds regular meetings and has written processes and procedures for making investment decisions, either individually or among the membership of the group as a whole, and is neither associated nor affiliated with brokers, dealers, or investment advisers. Does this definition appropriately cover the types of groups that sponsor such events, or are there changes that should be made to the definition? Should we include, as proposed, accelerators and incubators as organizations that may act as sponsors of these events? Should we define the terms ''accelerator'' and ''incubator'' for this purpose? Alternatively, should we specify only the types of groups that would be prohibited from acting as sponsors of these events, such as broker-dealers, investment advisers, or others? Are the proposed conditions to this exception, such as limitations on the sponsor's fees and the types of information an issuer may provide at the event appropriate? If

[134] For example, diverse founders, including women-owned and minority-owned businesses may have less access to start-up capital and venture capital (''VC'') funding. *See* Office of the Advocate for Small Business Capital Formation Annual Report for Fiscal Year 2019, *available at https://www.sec.gov/files/2019_OASB_Annual%20Report.pdf,* at 26 and 30. *See also* Presentation at Feb. 4, 2020 Small Business Capital Formation Advisory Committee meeting by James Gelfer, Senior Strategist, Lead Venture Analyst, PitchBook, *available at https://www.sec.gov/spotlight/sbcfac/2020-02-04-presentation-pitchbook-venture-climate.pdf,* at 13 (''Female-founded companies as a proportion of total US VC deal activity'' (showing the proportion of total U.S. VC deals for companies that had at least one female founder (22.8 percent of VC deals and 14.2 percent of VC dollars) and for companies with all female founders (6.8 percent of VC deals and 2.7 percent of VC dollars)). *See also* Banerji, Devika & Reimer, Torsten, *Startup Founders and Their LinkedIn Connections: Are Well-Connected Entrepreneurs More Successful?* 90 Computers in Hum. Behavior 46 (2019) (finding that social connectedness of founders was the best predictor of funds raised).

[135] *See, e.g.,* NYSBA Letter; letter from Institute for Portfolio Alternatives dated September 24, 2019 (''IPA Letter''); CCMC Letter; Dechert Letter; IAA Letter; letter from Association for Corporate Growth dated September 24, 2019; ABA Letter; and Transcript of SEC Small Business Capital Formation Advisory Committee (Feb. 4, 2020), *available at https://www.sec.gov/info/smallbus/acsec/sbcfac-transcript-020420.pdf* (''2020 Transcript of Small Business Advisory Committee''), at 172–174 (discussing confusion surrounding general solicitation).

not, how should those conditions be revised? Are there additional conditions that we should specify with respect to this exception, such as a requirement that certain disclosures be provided to event attendees, or limitations on the characteristics of the entities that may avail themselves of this exception (*i.e.,* entities formed for the purposes of sponsoring events in order to engage in general solicitation)?

20. Should we provide a definition of ''general solicitation'' and ''general advertising''? If so, how should those terms be defined? Should we instead eliminate all prohibitions on ''general solicitation'' and ''general advertising'' and focus investor protections at the time of sale rather than at the time of offer?

21. Should we move the existing list of examples provided in Rule 502(c) to a new rule? Do the current examples in Rule 502(c) pose any particular challenges we should consider in formulating a new rule? Are there different or additional examples that we should provide? For example, should we include any form of direct mail, telephone, email, text messaging, or similar method of communication, if the issuer (or any underwriter, broker, dealer, or agent acting on behalf of the issuer) does not have a pre-existing, substantive relationship with the offerees, or cannot otherwise demonstrate the absence of a general solicitation?

22. Should we define the term ''pre-existing substantive relationship'' in the rule? If so, should we define the term consistently with the guidance set forth in this release? If not, how should we define this term?

23. Would the proposed changes positively impact access to capital by counterbalancing social network effects for underrepresented founders, such as women, minorities, and entrepreneurs in rural areas?

2. Solicitations of Interest

The JOBS Act added Securities Act Section 5(d), permitting emerging growth companies (''EGCs''),[136] and persons authorized to act on their behalf, to engage in oral or written communications with potential investors that are QIBs or IAIs before or after filing a registration statement to gauge such investors' interest in a contemplated securities offering.[137] Securities Act Rule 163B, which the Commission adopted in September 2019, extended to all issuers the ''test-the-waters'' accommodation previously available only to EGCs.[138] Under the new rule, all issuers and those authorized to act on their behalf are allowed to gauge market interest in a registered securities offering through discussions with QIBs and IAIs prior to, or following, the filing of a registration statement.

Regulation A also permits issuers to ''test-the-waters'' with, or solicit interest in a potential offering from, the general public either before or after the filing of the offering statement, provided that all solicitation materials include certain required legends and, after publicly filing the offering statement, are preceded or accompanied by a preliminary offering circular or contain a notice informing potential investors where and how the most current preliminary offering circular can be obtained.[139]

These solicitations of interest are deemed to be offers of a security for sale for purposes of the antifraud provisions of the federal securities laws.[140] We believe that the existing testing-the-waters provisions allow issuers to consult effectively with investors as they evaluate market interest in a contemplated registered or Regulation A securities offering before incurring the costs associated with such an offering, while preserving investor protections. This consultation allows investors to have input into the structuring of the offering and also allows for investors to convey to the issuer the types of information about which they are most interested, leading ultimately to a lower cost of capital for the issuer and potentially resulting in more investor-friendly deal terms. Because we are of the view that issuers may similarly benefit from an ability to consult with investors as they evaluate market interest in other types of offerings, we are proposing a new exemption that would permit an issuer to solicit indications of interest in an exempt offering orally or in writing prior to determining which exemption it would rely upon to conduct the offering. We are also proposing amendments to Regulation Crowdfunding to permit an issuer to solicit indications of interest under a new Regulation Crowdfunding-specific provision, as well as amendments to Regulation Crowdfunding's and Regulation A's testing-the-waters provisions to reflect the possibility that an issuer may choose to test-the-waters using a generic solicitation of interest prior to determining whether to conduct its offering under Regulation A or Regulation Crowdfunding.

a. Generic Solicitation of Interest Exemption

We are proposing to create a new exemption, using our authority under Section 28 of the Securities Act, that would permit an issuer to use generic solicitation of interest materials for an offer of securities prior to a making a determination as to the exemption under which the offering may be conducted. This new exemption, which is substantially based on existing Rule 255 of Regulation A, would be set forth in proposed Rule 241. We believe that proposed Rule 241 would further the public interest by allowing issuers significant flexibility to gauge market interest in an exempt offering, tailor the size and other terms of the offering, and reduce the costs of conducting an exempt offering. Investors would also benefit from this flexibility, because they would potentially have input into the structuring of the offering and be able to convey to the issuer the types of information about which they are most interested, leading ultimately to a lower cost of capital for the issuer. As discussed below, the proposed rule also includes several conditions intended to ensure appropriate investor protections.

An issuer that chooses to ''test-the-waters'' under the proposed exemption would not be permitted to identify which specific exemption from registration it may rely upon for a subsequent offer and sale of the securities. We believe that if the issuer has determined the exemption under which the offering will be conducted, the issuer must comply with the specific terms of the exemption being relied upon. For example, an issuer could conduct a generic solicitation of interest under proposed Rule 241 and determine based on feedback from potential investors that it wishes to proceed with an offering under Regulation A. From that point in time, any testing-the-waters materials that the issuer uses would be required to comply with Rule 255 of Regulation A.

As proposed, Rule 241(b) would require the materials used under this exemption to bear a legend or disclaimer notifying potential investors that (1) the issuer is considering an offering of securities exempt from registration under the Securities Act, but has not determined a specific exemption from registration the issuer

[136] *See* 17 CFR 230.405 (defining ''emerging growth company'').

[137] Sec. 105(c), Public Law 112–106, 126 Stat. 306 (2012).

[138] *See* Solicitations of Interest Prior to a Registered Public Offering, Release No. 33–10699 (Sep. 25, 2019) [84 FR 53011 (Oct. 4, 2019)] (''Solicitations of Interest Release'').

[139] *See* 17 CFR 230.255.

[140] *See* Solicitations of Interest Release; and 17 CFR 230.255(a).

intends to rely upon for the subsequent offer and sale of the securities; (2) no money or other consideration is being solicited, and if sent, will not be accepted; (3) no sales will be made or commitments to purchase accepted until the issuer determines the exemption under which the offering is intended to be conducted and, where the exemption includes filing, disclosure, or qualification requirements, all such requirements are met; and (4) a prospective purchaser's indication of interest is non-binding. These solicitations would be deemed to be offers of a security for sale for purposes of the antifraud provisions of the federal securities laws.[141]

Depending on the method of dissemination of the information, such offers may be considered a general solicitation.[142] If soliciting generic indications of interest under the proposed rule is done in a manner that would constitute general solicitation, and the issuer ultimately decides to conduct an unregistered offering under an exemption that does not permit general solicitation, the issuer would need to analyze whether the generally solicited offer and the subsequent private offering could be integrated, thereby making the exemption that does not permit general solicitation unavailable. Such an issuer, however, may be able to rely on the integration safe harbor in proposed Rule 152(b)(1) to conduct an offering that does not permit general solicitation if it waits 30 days following termination of the generic solicitation of interest before commencing the private offering. Note, however, that even if the 30-day safe harbor is available, the issuer would not be able to follow a generic solicitation of interest that used a general solicitation with an offering pursuant to an exemption that does not permit general solicitation, such as Rule 506(b), if the offerees contacted in connection with the Rule 506(b) offering were solicited by means of the general solicitation. Alternatively, an issuer that wanted to have the option to conduct an offering that does not permit general solicitation immediately following a generic solicitation of interest could ''test-the-waters'' using the proposed legend without using general solicitation, for example, by limiting its communications to potential investors with whom the issuer has a pre-existing substantive relationship or to direct contact by the issuer or its agents outside of a public offering effort.

We believe that the proposed exemption would be consistent with the protection of investors. As with the existing testing-the-waters provisions of Rule 163B and Regulation A, the anti-fraud provisions of the federal securities laws would apply to these generic solicitations of interest.[143] In addition, proposed Rule 241 would provide an exemption from registration only with respect to the generic solicitation of interest, not for a subsequent offer or sale. Should the issuer move forward with an exempt offering following the generic solicitation of interest, the issuer must comply with the exemption relied upon for the subsequent offering, and investors will have the benefit of the investor protections encompassed in such exemption. For example, if an issuer relies on proposed Rule 241 for a generic solicitation of interest and then opts to rely on Regulation A for the offering, the investors will receive the full disclosures required by Regulation A prior to the time of sale.

In addition to the information currently required to be disclosed under Regulation A and Regulation Crowdfunding, we are proposing to also require that the generic solicitation materials be made publicly available as an exhibit to the offering materials filed with the Commission, if the Regulation A or Regulation Crowdfunding offering is commenced within 30 days of the generic solicitation.[144] We believe that making the solicitation materials publicly available would help to hold issuers accountable for the content of solicitation materials by making them subject to scrutiny by the potential investors and the public and, in the case of Regulation A, staff review and comment. It also would help to ensure that the solicitation information is consistent with the information contained in the Regulation A or Regulation Crowdfunding offering materials.

We are also proposing an amendment to the information requirements in Rule 502(b) so that if the issuer sells securities under Rule 506(b) within 30 days of the generic solicitation of interest to any purchaser that is not an accredited investor, the issuer would be required to provide such purchaser with any written communication used under proposed Rule 241. Although this information would not be made publicly available, we believe that potential investors may benefit from the ability to compare the solicitation materials with the information being provided in the Rule 506(b) offering, which may help investors hold issuers accountable for any inconsistencies in such materials. We are not proposing that an issuer that subsequently opts to rely on any other exemption, including Rule 506(c), Rule 504, Rule 147, or Rule 147A, for the offering be required to file or provide to investors any materials used under proposed Rule 241, because such rules do not require issuers to file with the Commission any disclosure provided to investors or distinguish between accredited and non-accredited investors for disclosure purposes.

We are not proposing to limit the types of investors that may be solicited under proposed Rule 241. While Securities Act Section 5(d) and Rule 163B only permit the use of testing-the-waters communications with QIBs and IAIs, Regulation A permits such communications with all investor types. We believe that limiting the communications under the proposed exemption to QIBs and IAIs would undermine the intent of the exemption, which is to allow issuers to gauge market interest in a potential exempt offering. Unlike registered offerings, there is likely to be relatively limited institutional investor interest in many types of exempt offerings, particularly those that rely on general solicitation. In addition, small or emerging businesses are likely to face challenges in attracting significant institutional investor interest, either directly or through an underwriter or other intermediary. Thus, limiting this accommodation to institutional investors would significantly undermine its utility.

We are also not proposing to provide for the preemption of state securities law registration and qualification requirements for offers made under proposed Rule 241. Section 18 of the Securities Act generally provides for preemption of state law registration and qualification requirements for ''covered

[141] Proposed Rule 241(a).

[142] Such offers also may be considered ''directed selling efforts'' as defined in Regulation S. Under the proposed amendment to the definition of directed selling efforts in Rule 902 of Regulation S, a generic solicitation that would be considered general solicitation activity would not be considered ''directed selling efforts'' in connection with an offering under Regulation S, if the general solicitation activity is not undertaken for the purpose of conditioning the market in the United States for any of the securities being offered in reliance on Regulation S. Such an issuer would be subject to the proposed Rule 906 restrictions on resales. *See supra* Section II.A.2.

[143] *See, e.g.,* Section 17(a) of the Securities Act. *See also* Solicitations of Interest Release; and 2015 Regulation A Release.

[144] *See* proposed Rule 201(z); and proposed paragraph 13 of Form 1–A, Part III, Item 17. Currently, an issuer that solicits indications of interest in reliance on Rule 255 of Regulation A is required to submit or file solicitation materials to the Commission as an exhibit when the offering statement is either submitted for non-public review or filed (and update for substantive changes in such material after the initial nonpublic submission or filing).

securities,'' [145] and the Commission has previously used its authority under the Securities Act to define such term. In connection with the 2015 amendments to Regulation A, the Commission determined that preemption of state securities law registration and qualification requirements is appropriate for purchasers in Tier 2 offerings, and defined ''qualified purchaser'' to include any person to whom securities are offered or sold in a Tier 2 offering.[146] However, in light of concerns raised in connection with the Regulation A amendments by state regulators about the testing-the-waters provisions applicable to Regulation A, as well as what the Commission anticipated would be the generally more local nature of Tier 1 offerings, the Commission did not include offerees in Tier 1 offerings in the definition of ''qualified purchaser.'' [147] We preliminarily believe that similar concerns would exist with respect to the proposed generic solicitation of interest exemption.

b. Regulation Crowdfunding

An issuer currently may not make offers or sales under Regulation Crowdfunding prior to filing a Form C with the Commission.[148] Commenters on the Concept Release expressed support for permitting testing-the-waters in advance of an offering under Regulation Crowdfunding.[149] These commenters indicated that prohibiting testing-the-waters under Regulation Crowdfunding restricts issuers' ability to adequately gauge interest in an offering, before incurring the expense of preparing a Form C.[150]

Some commenters supported permitting testing-the-waters under Regulation Crowdfunding, subject to certain restrictions on the means by which such communications were provided to investors, the content of such communications, and the way in which such communications were included in an issuer's public filings.[151] Two of these commenters supported allowing testing-the-waters if such communications were only conducted through an intermediary's platform.[152] Another commenter suggested that testing-the-waters materials should be required to direct investors to the funding portal (or broker-dealer) for more information on the offering.[153] In addition, several commenters suggested that testing-the-waters materials should be filed with the Commission on Form C.[154]

We are proposing to permit Regulation Crowdfunding issuers to test-the-waters orally or in writing prior to filing a Form C with the Commission under proposed Rule 206, which is based on existing Rule 255 of Regulation A.[155] Consistent with the views of commenters, we believe that permitting such issuers to test-the-waters orally or in writing prior to incurring the expense of filing a Form C with the Commission may greatly facilitate the use of the exemption, as well as limit the costs incurred by issuers. As noted above with respect to the proposed generic testing-the-waters provision, we believe that the flexibility afforded by the amendment would benefit investors, who would potentially have input into the structuring of the offering and be able to convey to the issuer the types of information about which they are most interested, leading ultimately to a lower cost of capital for the issuer.

Under proposed Rule 206, issuers would be permitted to test-the-waters with all potential investors. These testing-the-waters materials would be considered offers that are subject to the antifraud provisions of the federal securities laws. Like Rule 255, proposed Rule 206 would require issuers to include certain legends in the testing-the-waters materials. The legends would provide that: (1) No money or other consideration is being solicited, and if sent, will not be accepted; (2) no sales will be made or commitments to purchase accepted until the Form C is filed with the Commission and only through an intermediary's platform; and (3) a prospective purchaser's indication of interest is non-binding.

Under proposed Rule 201(z), issuers would be required to include any Rule 206 solicitation materials as an exhibit to the Form C that is filed with the Commission.[156] As noted above, we believe that making the solicitation materials publicly available would promote accountability for the content of those materials and help to ensure that they are consistent with the information contained in the Regulation Crowdfunding offering materials. Unlike Rule 255 of Regulation A, which permits issuers to use testing-the-waters materials both before and after the filing of the offering statement with the Commission, issuers under proposed Rule 206 could only use testing-the-waters materials before the Form C is filed. Once the Form C is filed, any offering communications would be required to comply with the terms of Regulation Crowdfunding, including the Rule 204 advertising restrictions. We believe this is appropriate because, while sales under Regulation A may not occur until after the offering statement is qualified, a Regulation Crowdfunding offering commences upon filing of the Form C.

In addition, under the proposed rule, an issuer that makes use of proposed Rule 241's generic testing-the-waters materials and then opts to rely on Regulation Crowdfunding for an offering within 30 days of the most recent generic testing-the-waters materials would be required to file the generic solicitation materials as an exhibit to the Form C. We are proposing to require filing of the materials only during the 30-day time period because once 30 days elapses following a terminated or completed generic solicitation, that offer would not be subject to integration with any subsequent offer or sale in

[145] *See* 15 U.S.C. 77r(c). Section 18(c) of the Securities Act preserves general anti-fraud authority for state securities law regulators.

[146] *See* 17 CFR 230.256; and 2015 Regulation A Release, at text accompanying note 799.

[147] *See* 2015 Regulation A Release, at text accompanying note 798.

[148] *See* Section 4A(b) of the Securities Act.

[149] *See* CrowdCheck Letter; CCA Letter; letter from Wefunder dated September 13, 2019 (''Wefunder Letter''); letter from MainVest, Inc. dated September 24, 2019 (''MainVest Letter''); letter from Republic dated September 24, 2019 (''Republic Letter''); letter from Jade Barker dated September 24, 2019; letter from Association of Online Investment Platforms dated July 5, 2019 (''AOIP Letter''); letter from Indemnis et al. dated September 24, 2019 (''Indemnis et al. Letter''); letter from Andrew A. Schwartz dated September 24, 2019 (''A. Schwartz Letter''); Letter from Christian Bilger dated September 30, 2019 (''C. Bilger Letter''); letter from Patrick McHenry, U.S. Representative, dated October 15, 2019 (''Rep. McHenry Letter''); and Silicon Prairie Letter.

[150] *See, e.g.,* Wefunder Letter (describing the fact that issuers are currently required to spend ''over $10,000'' to prepare for a Regulation Crowdfunding offering, without clarity on the investor interest in the offering); MainVest Letter (suggesting that testing-the-waters would allow issuers to more accurately ''assess the markets appetite and valuing of their business''); Republic Letter (stating that, under the current rules, ''companies cannot assess investor interest in their offering before having to commit the time and expense necessary to conduct a Reg. CF offering''); Indemnis et al. Letter (stating that the current rules prohibit issuers from gaining ''any real insight into the likelihood of success''); C. Bilger Letter (arguing that testing-the-waters would allow issuers ''to assess the support and project feasibility before [making a] costly Reg CF filing''); and AOIP Letter (suggesting that permitting testing-the-waters would save issuers both time and money).

[151] *See, e.g.,* CrowdCheck Letter; Wefunder Letter; Republic Letter; and Silicon Prairie Letter.

[152] *See* Republic Letter; and Indemnis et al. Letter.

[153] *See* CCA Letter.

[154] *See* Wefunder Letter (suggesting that testing-the-waters materials should be filed as a partially complete Form C); CrowdCheck Letter (suggesting that testing-the-waters materials should be included as part of Form C when the final Form C is filed); and Silicon Prairie Letter (suggesting that tombstone advertisements should be separately filed on EDGAR).

[155] We are also proposing an amendment to Rule 204 to permit issuers to engage in communications under proposed Rule 206.

[156] *See* Proposed Rule 201(z).

accordance with the proposed safe harbor of Rule 152(b)(1).

c. Regulation A

As discussed above, we are proposing to amend Form 1–A's exhibit requirements to require an issuer that uses proposed Rule 241 to conduct a generic solicitation of interest and then opts to rely on Regulation A for its offering within 30 days of the most recent generic solicitation communication to file the generic solicitation materials as an exhibit to the Form 1–A.

d. Regulation D

Similarly, we are proposing to amend Rule 502(b)(2)(viii) to require an issuer that uses proposed Rule 241 to conduct a generic solicitation of interest and then opts to rely on Rule 506(b) within 30 days of the most recent generic solicitation communication and sells securities to any purchaser that is not an accredited investor, to provide the generic solicitation materials to such purchaser a reasonable time prior to sale. As discussed above, we believe potential investors may benefit from the ability to compare the solicitation materials with the information being provided in the Rule 506(b) offering.

Request for Comment

24. Should we, as proposed, permit generic solicitations of interest in advance of an exempt offering of securities under any exemption from registration? Are there any investor protection concerns with doing so? Should we limit the ability to provide testing-the-waters materials to IAIs and QIBs?

25. Should we, as proposed, require filing of the generic solicitation materials as an exhibit to the Form C in a subsequent Regulation Crowdfunding offering, or with the Form 1–A in a subsequent Regulation A offering? Should we instead require the generic solicitation materials to be either filed with Form C or Form 1–A, or filed separately on EDGAR? Should we, as proposed, limit the filing requirement to offerings that commence within 30 days of the most recent generic test-the-waters communication? Should we instead impose the filing requirement irrespective of the timing of the subsequent offering or for some alternative timeframe?

26. Should we, as proposed, require an issuer to provide the generic solicitation materials to non-accredited investors in a subsequent Rule 506(b) exempt offering if such Rule 506(b) offering is within 30 days of the generic solicitation? Should we require such materials to be provided to the Commission? Should we require such material to be provided to investors or the Commission even outside of the 30-day period proposed?

27. Should we require an issuer that uses generic solicitation materials and subsequently relies on Rule 506(c), Rule 504, Rule 147, Rule 147A, or an exemption other than Regulation A, Regulation Crowdfunding, or Rule 506(b) within 30 days to provide the generic solicitation materials to such investors? Should we require such materials to be provided to the Commission? Should we require such material to be provided to investors or the Commission even outside of the 30-day period proposed?

28. Should we, as proposed, amend Regulation Crowdfunding to permit testing-the-waters for a Regulation Crowdfunding offering, similar to the current testing-the-waters provision of Regulation A? Should we impose additional restrictions on the manner or content of such communications? For example, should we permit testing-the-waters in Regulation Crowdfunding only if any such communications are only conducted through an intermediary's platform, or only if the testing-the-waters materials are required to direct investors to the funding portal (or broker-dealer) for more information on the offering?

29. As proposed, the rules would not preempt state securities law registration and qualification requirements for offers made under the proposed Rule 241 exemption. Should we adopt Rule 241 as proposed? Would the lack of state preemption make it less likely that issuers will use proposed Rule 241? If so, should we preempt state securities law registration and qualification requirements for offers made under the proposed Rule 241 exemption? If not, should we limit preemption to materials provided to accredited investors or QIBs and IAIs?

30. Should we permit testing-the-waters communications to continue following the filing of the Form C with the Commission in a Regulation Crowdfunding offering?

3. Other Regulation Crowdfunding Offering Communications

Under Rule 204 of Regulation Crowdfunding, an issuer may not advertise the terms of a Regulation Crowdfunding offering outside of the intermediary's platform except in a notice that directs investors to the intermediary's platform and includes no more than the following information:

- A statement that the issuer is conducting an offering pursuant to Section 4(a)(6) of the Securities Act, the name of the intermediary through which the offering is being conducted, and a link directing the potential investor to the intermediary's platform;
- The terms of the offering, which means the amount of securities offered, the nature of the securities, the price of the securities, and the closing date of the offering period; and
- Factual information about the legal identity and business location of the issuer, limited to the name of the issuer of the security, the address, phone number, and website of the issuer, the email address of a representative of the issuer, and a brief description of the business of the issuer.[157]

Although advertising the terms of the offering other than through the intermediary's platform is limited to a brief notice, an issuer may communicate with investors and potential investors about the terms of the offering through communication channels provided on the intermediary's platform. An issuer must identify itself as the issuer, and persons acting on behalf of the issuer must identify their affiliation with the issuer, in all communications on the intermediary's platform.[158]

Commenters have expressed uncertainty as to whether they may orally communicate with potential investors outside of the intermediary's platform once the Form C is filed. According to these commenters, the current requirements of Regulation Crowdfunding make it unclear if an issuer can discuss an ongoing offering at start-up pitch events, in person at the issuer's business, or in the issuer and investor communities, and if so, to what extent.[159]

We are proposing to amend Rule 204 to state that oral communications with prospective investors are permitted once the Form C is filed, so long as the

[157] *See* Rule 204.

[158] *See* Rule 204(c).

[159] *See* CrowdCheck Letter (suggesting that issuers should be permitted to discuss directly with prospective investors at start-up pitch events); MainVest Letter (suggesting that the current framework prohibits issuers ''with brick and mortar locations'' from discussing the offering with customers, and potential investors, who come into the issuer's business with questions about the offering); C. Bilger Letter (indicating that the current restrictions are ''unreasonable'' and ''unrealistic'' as ''[m]ost investment through Reg CF offerings occurs between issuers and investors that have a pre-existing relationship or are geographically proximate to one another,'' and further suggesting that ''[i]nvestors should be encouraged to pursue multiple channels of investment due diligence (completely separate from a funding portal), including onsite inspection of the issuer's business and personal interview of the issuer's management''); and Wefunder Letter (''Due to legal ambiguity, some lawyers recommend that issuers do not speak with potential investors face-to face.'').

communications comply with the requirements of Rule 204.[160] We believe that this amendment to Rule 204 would be appropriate because it would provide Regulation Crowdfunding issuers with certainty as to the acceptable form and content of communications with potential investors, which may make the exemption more attractive to issuers, while providing potential investors with the protections afforded by Rule 204. These proposed changes would also align the Regulation Crowdfunding communication rules more closely with Rule 255 of Regulation A.

Request for Comment

31. Should we allow for oral communications about the offering outside of the funding portal's platform channels, as proposed? If so, what would be the benefits of allowing more communications? Should we impose any additional requirements to address investor protection concerns?

32. Should we expand the types of information considered to be the terms of the offering for purposes of Rule 204? For example, should we amend the definition of ''terms of the offering'' to include information about the planned use of proceeds of the offering or about the issuer's progress toward meeting its funding target? Should we amend Rule 204 to allow for oral communications pertaining to any disclosure required by Rule 201 that is included in the filed Form C? Alternatively, should an issuer that uses advertising that includes the terms of the offering be permitted to include additional information, such as information about the planned use of proceeds of the offering or the issuer's progress toward meeting its funding target, even if such information is not included within the definition of the ''terms of the offering''? Are there other steps we should take to clarify the advertising restrictions in Rule 204?

33. In light of proposed Rule 152(a)(2), which concerns the integration of concurrent exempt offerings permitting general solicitation, should we amend Rule 204 of Regulation Crowdfunding to permit an issuer to disclose the material terms of a concurrent offering made in reliance on Regulation Crowdfunding in a Regulation A offering statement or a Securities Act registration statement filed with the Commission? Are any revisions needed to Regulation A to permit such disclosures?

C. Rule 506(c) Verification Requirements

As discussed above, Rule 506(c) permits issuers to generally solicit and advertise an offering, provided that:

- All purchasers in the offering are accredited investors,
- The issuer takes reasonable steps to verify that purchasers are accredited investors, and
- Certain other conditions in Regulation D are satisfied.[161]

Rule 506(c) provides a principles-based method for verification of accredited investor status as well as a non-exclusive list of verification methods. The principles-based method of verification requires an objective determination by the issuer (or those acting on its behalf) as to whether the steps taken are ''reasonable'' in the context of the particular facts and circumstances of each purchaser and transaction.[162] Rule 506(c) includes a non-exclusive list of verification methods that issuers may use, but are not required to use, when seeking to satisfy the verification requirement with respect to natural person purchasers.[163]

The Commission included the non-exclusive list of verification methods for natural persons in Rule 506(c) in response to comments requesting more certainty, but expressly stated that issuers are not required to use any of the specified methods and may rely on the principles-based approach to comply with the verification requirement.[164] However, the structure of Rule 506(c)'s verification requirement, with its prominent description of several non-exclusive verification methods, may be creating uncertainty for issuers and inadvertently encouraging issuers (or those acting on their behalf) to rely only on the non-exclusive list.

Commenters on the Concept Release expressed concerns regarding the costs and burdens of the ''reasonable steps to verify'' requirement. For example, one commenter stated that some issuers may be concerned about the added cost of capital represented by the fees charged by third party verification services.[165]

Some commenters also expressed concern about the difficulty of determining the appropriate levels of verification of the accredited investor status of purchasers and the impact on investor privacy.[166] Other commenters stated that issuers may be focusing on compliance with the non-exclusive list of methods and that may be driving away potential investors who are wary of turning over financially sensitive information, such as tax returns or brokerage statements, to the issuer for verification.[167] Some commenters further noted that some platforms and intermediaries involved in the verification process do not use all of the methods of verification included in the non-exclusive list of Rule 506(c), and, as a result, some accredited investors have been excluded from offerings.[168]

Some commenters on the Concept Release suggested eliminating the verification requirement altogether.[169] One commenter suggested eliminating the verification requirement for offerings that involve a placement agent, investment adviser or other regulated institution to act as a gatekeeper.[170] Other commenters recommended self-certification as a reasonable method to establish and verify accredited investor status.[171] Another commenter suggested adding a verification method based on a high minimum investment amount to the non-exclusive list of verification methods.[172]

We are proposing to add a new item to the non-exclusive list in Rule 506(c) that would allow an issuer to establish that an investor for which the issuer previously took reasonable steps to verify as an accredited investor remains

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[160] For our proposals regarding communications prior to the filing of a Form C, *see supra* Section II.B.2.

[161] *See* Rule 501 (Definitions and terms used in Regulation D); Rule 502(a) (Integration); and Rule 502(d) (Limitations on Resales).

[162] *See* Rule 506(c) Adopting Release, at Section II.B.1.

[163] The rule does not set forth a non-exclusive list of methods for the verification of investors that are not natural persons. In the adopting release, the Commission expressed the view that the potential for uncertainty and the risk of participation by non-accredited investors is highest in offerings involving natural persons as investors. *See* Rule 506(c) Adopting Release, at Section II.B.3.

[164] *See* Rule 506(c) Adopting Release, at Section II.B.3.

[165] *See* CrowdCheck Letter.

[166] *See* CCMC Letter; and letter from Jor Law dated July 10, 2019. *See also* 2020 Transcript of Small Business Advisory Committee, at 173–174 (discussing verification methods and concerns surrounding investor privacy).

[167] *See* IPA Letter; and letter from Wyrick Robbins Yates & Ponton LLP dated September 17, 2019 (''Wyrick Robbins Letter'') (''Our experience tells us that sophisticated funds and/or high net-worth angel investors are very much reluctant to share sensitive financial information, whether about themselves or their limited partners. Issuers are often reluctant to ask for such information as well, particularly where the net worth of the prospective investor is not in material doubt.'').

[168] *See* CrowdCheck Letter (noting that ''not all platforms and intermediaries are set up to accept all the forms of verification included in the safe harbors for 506(c)''). *See also* AngelList Letter (noting conflicting interpretations and uncertainty among issuers' counsel regarding verification of smaller private funds that meet the definition of ''accredited investor'' under Rule 501(a)(8) because each equity investor is accredited).

[169] *See* SIFMA Letter.

[170] *See* NYSBA Letter.

[171] *See* IPA Letter. *See also* letter from Joseph L. Schocken dated September 24, 2019 (''J. Schocken Letter'').

[172] *See* Wyrick Robbins Letter.

an accredited investor as of the time of a subsequent sale if the investor provides a written representation to that effect and the issuer is not aware of information to the contrary. We believe that this new method would reduce the cost and burden of verification for issuers that may opt to engage in more than one Rule 506(c) offering over time. Investors' privacy concerns may also be alleviated, because they would not be asked to repeatedly provide financially sensitive information to the issuer, while the risk of investor harm would be mitigated by the pre-existing relationship between the issuer and such investor.

In addition, in light of the comments received, we believe it would be helpful to reaffirm and update the Commission's prior guidance with respect to the principles-based method for verification, and in particular what may be considered ''reasonable steps'' to verify an investor's accredited investor status. We believe that this additional information may lessen concerns that an issuer's method of verification may be second guessed by regulators or other market participants without regard to the analysis performed by the issuer in making the determination, and encourage more issuers to rely on additional verification methods tailored to their specific facts and circumstances. This in turn may help reduce the costs and privacy concerns associated with the current non-exclusive list.

The principles-based method was intended to provide issuers with significant flexibility in deciding the steps needed to verify a person's accredited investor status and to avoid requiring them to follow uniform verification methods that may be ill-suited or unnecessary to a particular offering or purchaser in light of the facts and circumstances.[173] The Commission has previously indicated, and we continue to believe, that the following factors are among those an issuer should consider when using this principles-based method of verification:

- The nature of the purchaser and the type of accredited investor that the purchaser claims to be;
- The amount and type of information that the issuer has about the purchaser; and
- The nature of the offering, such as the manner in which the purchaser was solicited to participate in the offering, and the terms of the offering, such as a minimum investment amount.[174]

We are not proposing to codify the list of factors that the Commission has previously identified as being among those an issuer should consider when using the principles-based method of verification. While we believe that this list of factors remains appropriate, there is no exclusive list of factors to be considered.

We are of the view that, in some circumstances, the reasonable steps determination may not be substantially different from an issuer's development of a ''reasonable belief'' for Rule 506(b) purposes. For example, an issuer's receipt of a representation from an investor as to his or her accredited status could meet the ''reasonable steps'' requirement if the issuer reasonably takes into consideration a prior substantive relationship with the investor or other facts that make apparent the accredited status of the investor. That same representation from an investor may not meet the ''reasonable steps'' requirement if the issuer has no other information available to it about the investor or has information that does not support the view that the investor was an accredited investor.[175]

Request for Comment

34. We note that the vast majority of Regulation D issuers continue to raise capital through Rule 506(b) offerings. Are issuers hesitant to rely on Rule 506(c) (as suggested by the data on amounts raised under that exemption[176]) as compared to other exemptions? If so, why? Is the requirement to take reasonable steps to verify accredited investor status having an impact on the willingness of issuers to use Rule 506(c)?

35. Should we provide an additional method of verification, as proposed, that would allow an issuer to establish that an investor that the issuer has previously verified remains an accredited investor as of the time of sale, so long as the investor provides a written representation to that effect to the issuer and the issuer is not aware of information to the contrary? If so, should we impose a time limit on this method of verification, and if so, how long should that time limit be?

36. Is additional guidance for reasonable steps needed? Would further guidance provide more clarity? Should we eliminate the requirement to take reasonable steps to verify accredited investor status in specified circumstances? If so, which circumstances? Should the verification requirements be eliminated altogether, as suggested by some commenters? Would legislative changes be necessary or helpful?

37. Should we consider rescinding the non-exclusive list of reasonable verification methods? Should we consider mandating the items on the list as the exclusive methods for verification?

38. Are there additional or alternative verification methods that we should include in the non-exclusive list of reasonable verification methods that would make issuers more willing to use Rule 506(c) or would better address investor protection? For example, should we provide a non-exclusive list of reasonable verification methods that would apply to the verification of an entity's accredited investor status? Should we add as a specific verification method for either natural persons or entities with investments of a large minimum amount, accompanied by written confirmation that investment is not financed by a third party? If so, what minimum investment amount would be appropriate for natural persons or for IAIs?

39. The Commission has proposed to amend the definition of accredited investor to include new categories of natural persons and institutions.[177] Are there additional verification methods

[173] *See* Rule 506(c) Adopting Release, at Section II.B.1.

[174] *See id.* at Section II.B.3.a. In that release, the Commission stated that ''[a]fter consideration of the facts and circumstances of the purchaser and of the transaction, the more likely it appears that a purchaser qualifies as an accredited investor, the fewer steps the issuer would have to take to verify accredited investor status, and vice versa. For example, if the terms of the offering require a high minimum investment amount and a purchaser is able to meet those terms, then the likelihood of that purchaser satisfying the definition of accredited investor may be sufficiently high such that, absent any facts that indicate that the purchaser is not an accredited investor, it may be reasonable for the issuer to take fewer steps to verify or, in certain cases, no additional steps to verify accredited investor status other than to confirm that the purchaser's cash investment is not being financed by a third party.'' *Id.* In addition, the Commission stated that the means through which the issuer publicly solicits purchasers may be relevant in determining the reasonableness of the steps taken to verify accredited investor status. For example, ''[a]n issuer that solicits new investors through a website accessible to the general public, through a widely disseminated email or social media solicitation, or through print media, such as a newspaper, will likely be obligated to take greater measures to verify accredited investor status than an issuer that solicits new investors from a database of pre-screened accredited investors created and maintained by a reasonably reliable third party.'' *Id.*

[175] We caution issuers that we continue to believe that an issuer will not be considered to have taken reasonable steps to verify accredited investor status if it, or those acting on its behalf, require only that a person check a box in a questionnaire or sign a form, absent other information about the purchaser indicating accredited investor status.

[176] *See supra* Section I.B.1.

[177] *See* Amending the ''Accredited Investor'' Definition. Release No. 33–10734 (Dec. 18, 2019) [85 FR 2574] (Jan. 15, 2020) (''Accredited Investor Definition Proposing Release'').

that we should include in the non-exclusive list of reasonable verification methods in light of these proposed changes?

D. Harmonization of Disclosure Requirements

We are proposing amendments to the financial statement information requirements in Regulation D to align them with the disclosure requirements in Regulation A. Currently, when non-accredited investors are participating in an offering under Rule 506(b), the issuer conducting the offering must furnish specified financial statement information, along with non-financial information, to non-accredited investors a reasonable time prior to the sale of the securities and must provide these investors with the opportunity to ask questions and receive answers about the offering.[178] Similarly, issuers conducting offerings pursuant to Regulation A are required to provide certain financial statement and non-financial information to investors. The financial statement information requirements in Regulation D, however, differ from those in Regulation A. This difference results in many cases in an issuer being required to provide financial statements in a Rule 506(b) offering that are more burdensome to prepare than the financial statements that would be required in a Regulation A offering of comparable size.

We are also proposing to simplify the requirements for Regulation A and establish greater consistency between Regulation A and registered offerings by permitting Regulation A issuers to: (a) File certain redacted exhibits using the simplified process previously adopted for registered offerings and Exchange Act filings; [179] (b) make draft offering statements and related correspondence available to the public via EDGAR to comply with the requirements of Securities Act Rule 252(d), rather than requiring them to be filed as exhibits to qualified offering statements; (c) incorporate financial statement information by reference to other documents filed on EDGAR; and (d) to have post-qualification amendments declared abandoned. In particular, the exhibit requirements for registered and Regulation A offerings were previously aligned, but have diverged due to subsequent rule changes, while the expansion of the incorporation by reference provision in Form 1–A allows for the further alignment of Form 1–A with the Form S–1 registration statement. Furthermore, in light of the Supreme Court decision in *Food Marketing Institute* v. *Argus Leader Media,*[180] we are also proposing to revise the standard used throughout our rules that allow redaction of information from certain exhibits, as adopted in the FAST Act Modernization Release.

1. Rule 502(b) of Regulation D

We are proposing to amend the financial information requirements in Rule 502(b) for Regulation D offerings by non-reporting companies that include non-accredited investors to align with the disclosure required in offerings pursuant to Regulation A. Specifically, for Regulation D offerings of up to $20 million in securities, issuers would no longer be required to comply with the requirements of paragraph (c) of Part F/S of Form 1–A and provide audited financial statements and would be required to comply with the requirements of paragraph (b) of part F/S of Form 1–A, which applies to Tier 1 Regulation A offerings. For Regulation D offerings of greater than $20 million in securities, issuers would be required to provide audited financial statements and comply with the requirements of Regulation S–X similar to Tier 2 Regulation A offerings.[181] Rule 506(b) limits the number of non-accredited investors that may participate in a Regulation D offering to 35, and we estimate that in 2019 fewer than 5 percent of Rule 506(b) offerings included non-accredited investors.[182] We believe that by aligning the disclosure requirements in Rule 502(b) with those in Regulation A, additional issuers may be willing to include non-accredited investors in their offerings pursuant to Rule 506(b), which would expand investment opportunities for those investors.

Currently, when non-accredited investors are participating in an offering pursuant to Rule 506(b), the issuer conducting the offering must furnish to non-accredited investors the information required by Rule 502(b) [183] a reasonable time prior to the sale of securities and provide those investors with the opportunity to ask questions and receive answers about the offering.[184] The information required to be furnished to non-accredited investors is limited to information that is material to an understanding of the issuer, its business, and the securities being offered, and the examples of information that would satisfy this requirement vary depending on the size of the offering and the nature of the issuer.[185]

If the issuer is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the issuer must furnish the non-financial statement information required by Part II of Form 1–A[186] (if the issuer is eligible to use Regulation A) [187] or Part I of a Securities Act registration statement on a form that the issuer would be eligible to use.[188]

Table 7 summarizes the current financial statement requirements of Rule 502(b) for an issuer not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.[189]

[178] *See* Rule 502(b)(2)(v).

[179] *See* FAST Act Modernization and Simplification of Regulation S–K, Release No. 33–10618 (Mar. 20, 2019) [84 FR 12674] (Apr. 2, 2019) (''FAST Act Modernization Release''), at Section II.A.2.

[180] *See* 139 S.Ct. 2356 (2019).

[181] For the sake of clarity, we are not proposing that issuers must comply with the other ongoing non-financial statement disclosure requirements in Tier 2 Regulation A offerings, and this proposal is limited only to harmonization of the financial statement disclosure requirements outlined in the offering circular itself.

[182] *See supra* note 94 (estimating that, in 2019, only 4.45 percent of Rule 506(b) offerings by issuers other than pooled investment funds included non-accredited investors). Based on available data, issuers reported non-accredited investors as participating in only six percent of Rule 506(b) offerings in each of 2015, 2016, 2017, and 2018. *See* Concept Release, at Section II.

[183] *See* Rule 502(b)(2)(i) through (vii).

[184] *See* Rule 502(b)(2)(v). If an issuer limits participation in its Rule 506(b) offering to accredited investors, Rule 506(b) does not require the issuer to provide substantive disclosure to those accredited investors. However, if the issuer provides any additional information to accredited investors, the issuer shall furnish to any non-accredited purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such non-accredited purchaser. *See* 17 Rule 502(b)(2)(iv). Issuers and funds conducting private accredited investor-only offerings pursuant to Rule 506(b) often provide all purchasers, including accredited investors, with information about the issuer in view of the antifraud provisions of the federal securities laws. *See* Note to Rule 502(b).

[185] *See* Rule 502(b)(2)(i) through (vii).

[186] 17 CFR 239.90.

[187] *See infra* Section II.F for a discussion of the Regulation A eligibility requirements.

[188] *See* Rule 502(b)(2)(i)(A).

[189] *See* Rule 502(b)(2)(i)(B). A foreign private issuer, as defined in 17 CFR 230.405 that is eligible to use Form 20–F [17 CFR 249.220f] must disclose the same kind of information required to be included in an Exchange Act registration statement on a form that the issuer would be eligible to use. The financial statements must be audited only to the extent that such information would be required to be audited under Rule 502(b) for issuers not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. *See* Rule 502(b)(2)(i)(C).

TABLE 7—CURRENT RULE 502(b) FINANCIAL STATEMENT REQUIREMENTS

[Non-reporting issuer]

Offering size	Financial statement information required	Age of financial statements	Audit required
Up to $2 million	Information required in Article 8 of Regulation S–X.	Balance sheet must be dated within 120 days of the start of the offering.	Yes, but only the issuer's balance sheet must be audited.
Up to $7.5 million	Audited financial statement information required in Form S–1 for smaller reporting companies.	Balance sheet must be dated within 120 days of the start of the offering.	Yes, but if an issuer, other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet must be audited.
Over $7.5 million	Audited financial statement information that would be required in a registration statement filed under the Securities Act on the form that the issuer would be entitled to use.	Balance sheet must be dated within 120 days of the start of the offering.	Yes, but if an issuer other than a limited partnership, cannot obtain audited financial statements without unreasonable effort or expense, then only the issuer's balance sheet must be audited.

If the issuer is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the issuer must furnish to investors either:

• Its annual report to shareholders for the most recent fiscal year [190] and the definitive proxy statement filed in connection with that annual report; [191] or

□ The most recently filed annual report on Form 10–K [192] or registration statement.[193]

The financial statement information that an issuer must provide to non-accredited investors participating in an offering pursuant to Rule 506(b) is broadly similar to the disclosure required under Regulation A.[194] Table 8 summarizes the financial information issuers conducting a Regulation A offering are required to provide under Part F/S of Form 1–A.

TABLE 8—CURRENT REGULATION A FINANCIAL STATEMENT REQUIREMENTS

Offering size	Financial statement information required	Age of financial statements	Audit required
Up to $20 million (Tier 1)	Consolidated balance sheets of the issuer for the two previous fiscal year ends (or for such shorter time that the issuer has been in existence), Consolidated statements of comprehensive income, cash flows, and stockholders' equity of the issuer; and Financial statements of guarantors and issuers of guaranteed securities, affiliates whose securities collateralize an issuance, significant acquired or to be acquired businesses and real estate operations, and pro forma information relating to significant business combinations.	Not more than nine months before the date of non-public submission, filing or qualification, with the most recent annual or interim balance sheet not older than nine months.	No, unless issuer has already obtained an audit for another purpose.

190 The annual report must meet the requirements of Rules 14a–3 or 14c–3 under the Exchange Act (17 CFR 240.14a–3 or 17 CFR 240.14c–3).

191 *See* Rule 502(b)(2)(ii)(A). If requested by the purchaser in writing, the issuer must also provide a copy of the issuer's most recent Form 10–K [17 CFR 249.310] under the Exchange Act.

192 17 CFR 249.310.

193 The registration statement may be a registration statement on Form S–1 [17 CFR 239.11], Form S–11 [17 CFR 239.18], or Form 10 [17 CFR 249.10], or for foreign private issuers, Form 20–F [17 CFR 249.220f.] or Form F–1 [17 CFR 239.31]. *See* Rule 502(b)(2)(ii)(B). In addition, the issuer must provide any information required to be filed by the issuer since the distribution or filing of the report or registration statement and a brief description of the securities being offered, the use of the proceeds from the offering, and any material changes in the issuer's affairs that are not disclosed in the documents furnished. *See* Rule 502(b)(2)(ii)(C).

194 *See* Rule 251(a)(1).

TABLE 8—CURRENT REGULATION A FINANCIAL STATEMENT REQUIREMENTS—Continued

Offering size	Financial statement information required	Age of financial statements	Audit required
Up to $50 million (Tier 2)	Audited financial statements in compliance with Article 8 of Regulation S–X *.	Not more than nine months before the date of non-public submission, filing or qualification, with the most recent annual or interim balance sheet not older than nine months.	Yes.

* Interim financial statements for a Tier 2 Regulation A offering need not be audited and may comply with the same timing and age requirements as those provided in connection with Tier 1 Regulation A offerings. *See* paragraph (c) in Part F/S of Form 1–A [17 CFR 239.90].

In the Concept Release, the Commission requested comment on both the current information requirements in Rule 506(b) and the financial information requirements in Rule 502(b). Specifically, the Commission asked if it should align the requirements in Rule 502(b) with those of another type of exempt offering, or consider eliminating or scaling the financial information requirements. In response, several commenters stated that the financial statement requirements of Rule 502(b) are generally overly burdensome to issuers and provided a range of suggestions for revising the requirements. Specifically, one commenter stated that the disclosure requirements ''result in zero non-Accredited Investors being able to participate'' in private offerings and suggested a general ''downward adjustment'' in such requirements.[195] This sentiment was echoed by several other commenters, one of whom said that the ''information requirements for non-accredited investors frequently deter issuers from allowing such investors to participate in exempt offerings,'' while another highlighted the ''risk and uncertainty'' of attempting to comply with such disclosure requirements.[196] A few commenters noted that the disclosure requirements in Rule 502(b) are ''burdensome.'' [197]

Some commenters stated that the Commission should consider scaling the disclosure requirements depending on the amount of securities being offered, eliminating or scaling the information requirements to the extent that non-accredited investors are advised by a financial professional affiliated with a registered broker-dealer or employed by a registered investment adviser, and/or modifying the information requirement for early stage issuers, similar to the scaled disclosure requirement available to smaller reporting companies in registered offerings.[198] One commenter stated that overall financial disclosure and reporting requirements should reflect the type of company and size and type of offering, such that small issuers conducting smaller offerings would not be held to the same standard as larger companies raising larger amounts of capital.[199] A few commenters suggested harmonizing the Rule 502(b) disclosure requirements for non-accredited investors with those in Form 1–A for offerings exempt from registration pursuant to Regulation A.[200]

Conversely, one commenter supported requiring mandatory disclosures in offerings under Rule 506 to both accredited and non-accredited investors.[201] Another commenter suggested that the information requirements in Rule 506(b) should be privately negotiated and indicated that, with respect to non-accredited investors, the information requirements have not caused ''significant problems.'' [202]

After considering the comments received, we are proposing to amend Rule 502(b)'s requirements governing the financial information that non-reporting companies must provide non-accredited investors participating in Regulation D offerings to align with the financial information that issuers must provide investors in Regulation A offerings.[203] For offerings of $20 million or less, Rule 502(b)(2)(i)(B)(*1*) would refer such issuers to paragraph (b) of part F/S of Form 1–A, which applies to Tier 1 Regulation A offerings. For offerings of greater than $20 million, Rule 502(b)(2)(i)(B)(*2*) would refer issuers to paragraph (c) of part F/S of Form 1–A, which applies to Tier 2 Regulation A offerings. This amendment would have the effect of eliminating the current Rule 502(b) provisions that permit an issuer, other than a limited partnership, that cannot obtain audited financial statements without unreasonable effort or expense, to provide only the issuer's audited balance sheet.[204]

In addition, under the proposed amendments, a foreign private issuer that is not an Exchange Act reporting company would be required to provide financial statement disclosure consistent with the Regulation A requirements.[205] The foreign private issuer would be permitted to provide financial statements prepared in accordance with either U.S. GAAP or

[195] *See* Letter from Island Mountain Development Group dated September 24, 2019.

[196] *See* CoinList Letter; and AngelList Letter. *See also* letter from Rosebud Economic Development Corporation dated September 24, 2019; Davis Polk Letter; and letter from Ropes & Gray LLP dated September 24, 2019. Further, another commentator highlighted ''issuers' justifiable fear of exposing themselves to the risk of liability if required to provide specific information to purchasers, and . . . the substantial professional service fees related to providing information disclosures,'' as reasons for the lack of non-accredited investor participation in offerings. *See* letter from Robert Anderson, Samantha Prince, John Neil Conkle, and Sarah Zomaya dated September 24, 2019. Yet another commenter highlighted the substantial cost to issuers of preparing a Rule 506(b) disclosure document for an offering including even a single non-accredited investor. *See* letter from Joe Wallin et al. dated September 23, 2019.

[197] *See* Letter from the Committee on Capital Markets Regulation dated September 19, 2019; and letter from Iownit Capital Markets, Inc. dated September 24, 2019 (''Iownit Letter'').

[198] *See* NYSBA Letter; and ABA Letter.

[199] *See* AOIP Letter.

[200] *See* CrowdCheck Letter; and letter from Bybel Rutledge LLP, dated September 24, 2019.

[201] *See* Letter from Xavier Becerra, California Attorney General, et al., dated September 24, 2019 (''State Attorneys General Letter'').

[202] *See* Letter from The Heritage Foundation, dated September 24, 2019.

[203] We are not proposing to amend the current Rule 502(b) disclosure requirements with respect to issuers that are subject to the reporting requirements of the Exchange Act because the required information is generally already prepared by the issuer and available in order to comply with its Exchange Act reporting obligations and the disclosure of such information in connection with a Rule 506(b) offering is a negligible burden.

[204] *See* Rule 502(b)(2)(i)(B)(2) and (3).

[205] *See* proposed Rule 502(b)(2)(B). The term ''foreign private issuer'' means any foreign issuer, other than a foreign government, that does not meet the following criteria as of the last business day of its most recently completed second fiscal quarter: (i) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and (ii) any of the following: (a) The majority of the executive officers or directors are United States citizens or residents; (b) more than 50 percent of the assets of the issuer are located in the United States; or (c) the business of the issuer is administered principally in the United States. *See* 17 CFR 230.405.

International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB). For business combinations and exchange offers, we are proposing that an issuer that is not an Exchange Act reporting company would provide financial statements consistent with the Regulation A requirements.

We believe the proposed information requirements would appropriately provide investors with material financial disclosure about the issuer, enabling informed investment decisions. We acknowledge that Tier 1 of Regulation A limits the sum of all cash and other consideration to be received for the securities being offered plus the gross proceeds for all securities sold pursuant to other offering statements within the 12-month period before the start of and during the current Regulation A offering, which differs from Regulation D because it does not include any such lookback period.[206] However, aligning the financial statement information requirements in Rule 502(b) with those in Regulation A would establish greater uniformity in the financial statement information requirements applicable to exempt offerings, permitting issuers to more readily prepare for a variety of types of exempt offerings and therefore avail themselves of the most appropriate exemption from Securities Act registration for their particular facts and circumstances, which may lower their cost of capital. Although the information disclosed pursuant to Rule 502(b) is not filed in a disclosure document with the Commission, the information disclosed is subject to the anti-fraud provisions of the federal securities laws and remains so under this proposal.

Request for Comment

40. Are the current financial statement information requirements in Rule 506(b) appropriate or should they be modified to align the information requirements contained in Rule 502(b) applicable to non-reporting companies with those of Regulation A, as proposed? How would aligning such requirements affect capital raising under Rule 506(b)? Would there be investor protection concerns regarding any reduction in information required to be provided to non-accredited investors? Should we retain the current Rule 502(b) provisions that permit an issuer, other than a limited partnership, that cannot obtain audited financial statements without unreasonable effort or expense, to provide only the issuer's audited balance sheet?

41. Should we allow the use of financial statements consistent with Regulation A in offerings by non-reporting foreign private issuers and in business combinations and exchanges by non-reporting issuers, as proposed? Are there any unique considerations in these circumstances that would warrant a different approach?

42. Regulation Crowdfunding permits issuers to raise up to a maximum aggregate amount of $1,070,000 through crowdfunding offerings in any 12-month period, with financial statement requirements that vary based on the size of the offering. Should we consider aligning the Rule 502(b) financial information requirements for non-reporting issuers with those of Regulation Crowdfunding, or some combination of the requirements in Regulation A and Regulation Crowdfunding?

43. As proposed, non-reporting issuers conducting an offering of up to $20 million would be subject to the Regulation A Tier 1 financial information requirements, and issuers conducting an offering above that amount would be subject to the Regulation A Tier 2 financial information requirements. As an alternative, should we consider requiring issuers conducting offerings above $50 million or $75 million to comply with the financial information requirements applicable to smaller reporting companies under Article 8 of Regulation S–X?

44. Should we modify the Rule 502(b) financial information requirement in some other way? If so, how should it be amended?

45. Should we also amend the non-financial disclosure requirements in Rule 502(b)?

46. Should we, as proposed, retain the current Rule 502(b) disclosure requirements for Exchange Act reporting companies? If not, what should those requirements be?

47. Should the fact that Regulation A limits the amount of proceeds to be raised in a 12-month period before the start of and during an ongoing offering, while Regulation D does not include any such lookback period, impact the financial information requirements?

2. Confidential Information Standard

In March 2019, the Commission adopted amendments to several rules and forms that require registrants to file material contracts as exhibits to their disclosure documents.[207] The amendments in the FAST Act Modernization Release permit registrants to redact provisions or terms of exhibits required to be filed if those provisions or terms are both (i) not material and (ii) would likely cause competitive harm to the registrant if publicly disclosed. The ''competitive harm'' requirement was patterned on the standard then being used by the U.S. Circuit Court of Appeals for the District of Columbia [208] to define what information was confidential under Exemption 4 of the Freedom of Information Act (''FOIA''), which protects ''trade secrets and commercial or financial information obtained from a person [if they are] privileged or confidential.'' [209]

In June 2019, the Supreme Court rejected the Circuit Court's longstanding test for determining what information was confidential under Exemption 4 and adopted a new definition of ''confidential'' that does not include a competitive harm requirement.[210] The Supreme Court stated that ''[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4.'' [211] We are proposing to adjust our exhibit filing requirements as adopted in the FAST Act Modernization Release by removing the competitive harm requirement and replacing it with a standard more closely aligned with the Supreme Court's definition of ''confidential.'' Under the proposed amendments, information may be redacted from material contracts if it is the type of information that the issuer both customarily and actually treats as private and confidential, and which is also not material.[212] As discussed

[206] *See* Rule 251(a)(1).

[207] *See e.g.,* FAST Act Modernization Release, at text accompanying notes 45–73 (amending paragraphs (b)(2)(ii) and (b)(10)(iv) of Item 601 of Reg. S–K).

[208] *See National Parks and Conservation Association* v. *Morton,* 498 F.2d 765 (D.C. Cir. 1974); and *National Parks and Conservation Association* v. *Kleppe,* 547 F.2d 673 (D.C. Cir. 1976).

[209] 5 U.S.C. 552(b)(4).

[210] *Food Marketing Institute* v. *Argus Leader Media,* 139 S.Ct. 2356 (2019).

[211] *Id.* at 2366.

[212] We are proposing changes to the following rules and forms to update the standard: Item 601(b)(2) and (10) of Regulation S–K [17 CFR 229.601(b)(2) and (10)]; Form S–6 [17 CFR 239.16]; Form N–14 [17 CFR 239.23]; Form 20–F [17 CFR 249.220f]; Form 8–K [17 CFR 249.308]; Form N–1A [17 CFR 239.15A and 17 CFR 274.11A]; Form N–2 [17 CFR 239.14 and 17 CFR 274.11a-1]; Form N–3 [17 CFR 239.17a and 17 CFR 274.11b]; Form N–4 [17 CFR 239.17b and 17 CFR 274.11c]; Form N–

Continued

below, we are also proposing to use this new standard in the proposed exhibit requirements in Item 17 of Part III of Form 1–A.

Request for Comment

48. We are proposing to amend our rules and forms to replace the competitive harm standard with new language based on the Supreme Court's definition of ''confidential.'' Are there other changes we should make to our rules and forms in light of the Supreme Court decision?

3. Proposed Amendments To Simplify Compliance With Regulation A

In our review of the exempt offering framework, we identified several areas where compliance with Regulation A is more complex or difficult than for registered offerings and may not lead to greater investor protection. We are proposing to simplify Regulation A by aligning it with the rules for registered offerings regarding the redaction of confidential information in material contracts, permitting draft offering statements to be made public on EDGAR, permitting incorporation by reference on Form 1–A, and permitting the declaration of a post-qualification amendment as abandoned. Because these changes would not reduce the disclosure available to investors, but would simply harmonize the requirements for Regulation A offering statements with those already in effect for registered offerings, we do not believe there would be any negative implications for investor protection.

a. Redaction of Confidential Information in Certain Exhibits

We propose amending Item 17 of Form 1–A, which requires the filing of certain documents as exhibits to Regulation A disclosure documents,[213] to provide companies with the option to file redacted material contracts [214] and plans of acquisition, reorganization, arrangement, liquidation, or succession,[215] consistent with the recent amendments to Items 601(b)(2) and (10) of Regulation S–K. Companies would still have the option to file such exhibits pursuant to the existing confidential treatment application process, which would remain unchanged.

Currently, if a company wishes to redact immaterial confidential information included in a material contract or plan of acquisition, reorganization, arrangement, liquidation, or succession required to be filed as an exhibit to Regulation A disclosure documents, the company must apply for confidential treatment of that information. More specifically, the company must submit a detailed application to the Commission that identifies the particular text for which confidential treatment is sought, a statement of the legal grounds for the exemption, and an explanation of why, based on the facts and circumstances of the particular case, disclosure of the information is unnecessary for the protection of investors. Commission staff evaluates and grants or denies the request.

As described in Section II.D.2 above, in March 2019, the Commission amended several rules and forms to permit registrants to file redacted documents without applying for confidential treatment.[216] The rules currently require registrants to mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted, include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and would be competitively harmful if publicly disclosed, and indicate with brackets where the information has been omitted from the filed version of the exhibit.[217] Redacted exhibits are subject to compliance reviews by the staff. The process for filing redacted exhibits was not extended to Regulation A offerings at that time. As such, Regulation A issuers are still compelled to submit an application for confidential treatment in order to redact immaterial confidential information from material contracts and plans of acquisition, reorganization, arrangement, liquidation, or succession.

As proposed, a new instruction would be added to Item 17 of Form 1–A that would apply to paragraphs 6 and 7 of that item. This instruction would include similar procedures to the recent amendments to Items 601(b)(2) and (10) of Regulation S–K for filing redacted material contracts or plans of acquisition, reorganization, arrangement, liquidation, or succession. Commission staff would continue to review Forms 1–A filed in connection with Regulation A offerings and selectively assess whether redactions from exhibits appear to be limited to information that meets the appropriate standard.[218] Upon request, companies would be expected to promptly provide supplemental materials to the staff similar to those currently required, including an unredacted copy of the exhibit and an analysis of why the redacted information is both not material and the type of information that the company both customarily and actually treats as private and confidential. Pursuant to Rule 83, companies would be permitted to request confidential treatment of this supplemental information while it is in the staff's possession. If the company's supplemental materials do not support its redactions, the staff may request that the company file an amendment that includes some, or all, of the previously redacted information, similar to the process the staff currently follows for confidential treatment requests in connection with Regulation A offerings. After completing its review of the supplemental materials, the Commission or its staff would return or destroy them at the request of the company, as applicable.

Request for Comment

49. Should we amend the Regulation A exhibit filing requirements as proposed? Is there any reason not to extend this simplified confidential treatment application process to Regulation A issuers? Do our proposed amendments raise any investor protection concerns?

b. Amendment to Form 1–A Item 17.17(a) Requirement

We are proposing to amend Item 17.17(a) of Form 1–A to harmonize the procedures for publicly filing draft Regulation A offering statements with those for draft Securities Act registration statements. Instead of requiring documents previously submitted for non-public review by the staff and related, non-public correspondence to be filed as exhibits to a publicly filed offering statement, issuers conducting offerings exempt from registration pursuant to Regulation A would be able to make such documents available to the public via EDGAR to comply with the requirements of Securities Act Rule 252(d).

5 [17 CFR 239.24 and 17 CFR 274.5]; Form N–6 [17 CFR 239.17c and 17 CFR 274.11d]; and Form N–8B–2 [17 CFR 274.12].

[213] The exhibit requirements in Forms 1–K (Item 8) and 1–SA (Item 4) require companies to file as exhibits to those forms the exhibits required by Form 1–A, except for the exhibits required by paragraphs 1, 12, and 13 of Item 17.

[214] *See* Item 17.6 of Form 1–A.

[215] *See* Item 17.7 of Form 1–A.

[216] *See* FAST Act Modernization Release, at text accompanying notes 45–73 (amending paragraphs (b)(2)(ii) and (b)(10)(iv) of Item 601 of Reg. S–K).

[217] 17 CFR 229.601(b)(2) and (b)(10)(iv).

[218] As noted in Section II.D.2 above, we are proposing to amend the standard for redaction of information under this streamlined process, which currently requires that the redactions from exhibits be limited to information that is not material and that would cause competitive harm if publicly disclosed. We are proposing that the amended standard be patterned on the Supreme Court's language set out in *Food Marketing Institute.*

Today, issuers that are conducting Regulation A offerings are permitted to submit non-public draft offering statements and amendments for review by the Commission staff if they have not previously sold securities pursuant to (i) a qualified offering statement under Regulation A or (ii) an effective Securities Act registration statement.[219] Such issuers are also welcome to submit related non-public correspondence to the Commission staff for review confidentially. Current rules require that these non-public offering statements, amendments and correspondence be publicly filed as an exhibit to a publicly filed offering statement at least twenty-one calendar days prior to the qualification of the offering statement.[220] Similarly, an EGC may, prior to its initial public offering date, submit a draft registration statement and amendments to the Commission for non-public review by the staff.[221] However, unlike issuers submitting Regulation A offering statements for non-public review, there is no corresponding Securities Act rule or item requiring registration statements and amendments confidentially submitted by EGCs to be filed as an exhibit to a publicly filed registration statement. Instead issuers satisfy their public filing requirement by logging into their EDGAR account, selecting materials previously submitted non-publicly, and releasing them for public dissemination.[222] We propose deleting paragraph (a) of paragraph 17 so that issuers would no longer be required to file the non-public offering statements and related amendments and correspondence as exhibits. Instead, Regulation A issuers would be permitted to make previously non-public documents available to the public on EDGAR using the same process as issuers conducting a registered offering. We believe that this change would simplify the process of moving from a draft offering statement to a publicly filed document for issuers conducting Regulation A offerings, and would save both time and money for such issuers. In addition, because all previously submitted offering statements and related amendments and correspondence would be available to the public on EDGAR, rather than attached as exhibits to a given offering statement, this change should make it easier for investors to learn about the company and the Regulation A offering itself, furthering their ability to make informed investment decisions.

Request for Comment

50. Should we, as proposed, amend Form 1–A to allow non-public draft offering statements, amendments and related non-public correspondence to be made publicly available through the use of the EDGAR system, rather than requiring issuers to file such documents as exhibits to a publicly filed offering statement?

c. Incorporation by Reference of Previously Filed Financial Statements in Form 1–A for Regulation A Offerings

We are proposing to permit issuers to incorporate previously filed financial statements by reference into a Regulation A offering circular. The ability to incorporate financial statements by reference to Exchange Act reports filed before the effective date of a registration statement is permitted on Form S–1, subject to certain conditions.[223] Specifically, General Instruction VII of Form S–1 permits registrants that meet certain eligibility standards[224] to incorporate by reference the information required by Item 11 of Form S–1, which includes information about the registrant, such as, among other things, financial statement information meeting the requirements of Regulation S–X.[225] Regulation A issuers, however, are required to include the issuer's financial statements, prepared in accordance with the applicable requirements of Tier 1 or Tier 2 of Regulation A, in their Regulation A offering circular that is distributed to investors.[226]

In order to be able to incorporate previously filed financial statements by reference into an offering circular filed pursuant to Regulation A, we propose that, similar to the requirements in connection with Form S–1, issuers must satisfy several criteria. As proposed, issuers that have a reporting obligation under Rule 257 or the Exchange Act must be current in their reporting obligations. In addition, issuers would be required to make incorporated financial statements readily available and accessible on a website maintained by or for the issuer, and disclose in the offering statement that such financial statements will be provided upon request.[227]

Issuers conducting ongoing offerings would need to continue to file post-qualification amendments to Form 1–A annually to include the financial statements, either filed with such post-qualification amendment or incorporated by reference to a previously filed periodic or current report, that would be required to be included in a Form 1–A as of such date.[228] In addition, issuers would remain liable for such financial statements under Section 12(a)(2) of the Securities Act to the same extent as if they had been filed rather than incorporated by reference.

Several commenters on the Concept Release supported allowing incorporation by reference of the issuer's previously filed financial statements into the Form 1–A.[229] The ability to incorporate previously filed financial statement information by reference should decrease the existing filing burdens, allowing Regulation A issuers to more easily satisfy their ongoing disclosure requirements. In addition, although allowing incorporation by reference of previously filed financial statements into an offering circular in connection with offerings pursuant to Regulation A could increase the search time for potential investors as those investors would need to separately access the financial statements, we believe the impact of the proposal on investors would be mitigated by the ready

[219] 17 CFR 230.252(d).

[220] Item 17, paragraph 17(a) of Form 1–A [17 CFR 239.90] and 17 CFR 230.252(d).

[221] Section 6(e)(1) of the Securities Act.

[222] See related announcement by the Division of Corporation Finance, Draft Registration Statements to be Submitted and Filed on EDGAR, Sept. 26, 2012, *available at https://www.sec.gov/divisions/corpfin/cfannouncements/drsfilingprocedures.htm.*

[223] *See* General Instruction VII to Form S–1 [17 CFR 239.11].

[224] These criteria include, but are not limited to, that the registrant: (i) Is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act, (ii) has filed all reports and other materials required to be filed by Sections 13(a), 14, or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials), (iii) has filed an annual report required under Section 13(a) or Section 15(d) of the Exchange Act for its most recently completed fiscal year and (iv) is not, and during the past three years neither it nor any of its predecessors was: (a) A blank check company; (b) a shell company, other than a business combination related shell company; or (c) offering penny stock. The registrant must make its periodic and current reports filed pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference pursuant to Item 11A or Item 12 of Form S–1 readily available and accessible on a website maintained by or for the registrant and containing information about the registrant.

[225] *See* Item 12 to Form S–1 [17 CFR 239.11].

[226] *See* General Rule (a) to Part F/S of Form 1–A [17 CFR 239.90].

[227] General Instruction III(b) of Form 1–A [17 CFR 239.90] requires the inclusion of a hyperlink in the offering circular to material incorporated by reference which would include an issuer's previously filed financial statements on EDGAR.

[228] 17 CFR 230.252(f)(2)(i).

[229] *See* CoinList Letter; CrowdCheck Letter; and letter from Goodwin Procter LLP, dated September 24, 2019 (''Goodwin Letter'').

availability of the information, particularly through the required hyperlink in the offering statement.

Request for Comment

51. Should we amend Form 1–A to allow incorporation by reference of an issuer's previously filed financial statements, as proposed? How would such an amendment affect investors? Would this cause any increase in costs for issuers, such as in connection with consent fees from auditors?

52. Should the ability to incorporate financial statements into an offering circular by reference to previously filed documents be conditioned on eligibility requirements, similar to those currently applicable to issuers using Form S–1, as proposed? Are there other eligibility requirements we should consider? Should the ability to incorporate by reference financial statements into an offering circular be limited to previously filed financial statements as proposed or extended to include forward incorporation by reference to future financial statements under Regulation A?

53. Should we allow forward incorporation by reference in Regulation A offerings? In order to forward incorporate Exchange Act reports into a registration statement on Form S–1, a smaller reporting company must be current in its reporting obligations by having filed an annual report for its most recently completed fiscal year and all required Exchange Act reports and materials during the 12 months immediately preceding the Form S–1 filing (or such shorter period that the smaller reporting company was required to file such reports and materials). The smaller reporting company must also make its incorporated Exchange Act reports and other materials readily available and accessible on a website maintained by or for the issuer, and disclose in the prospectus that such materials will be provided upon request. If we were to permit forward incorporation by reference in Regulation A offerings, should issuers be required to meet similar requirements? Should issuers using forward incorporation by reference still be required to file an annual post-qualification amendment to their Form 1–A to include updated financial statements as well as to reflect a fundamental change in the information set forth in the offering statement?

d. Amendment to Abandonment Provision of Regulation A

We are proposing to amend the abandonment provisions of Rule 259(b) to permit the Commission to declare a post-qualification amendment to an offering statement abandoned, consistent with Rule 479,[230] the rule applicable to registered offerings.

The current rule only permits the Commission to declare an offering statement abandoned, and we believe there are situations where it would be appropriate for the Commission to have the ability to declare a specific post-qualification amendment abandoned, instead of the entire offering statement. For example, we have observed some issuers attempting to use post-qualification amendments for separate classes of securities that are not otherwise being offered under the offering statement. If an issuer failed to qualify a post-qualification amendment for such a separate class, but otherwise was in compliance with all of its Regulation A obligations, we believe it would be appropriate for the Commission to have the ability to declare that specific post-qualification amendment abandoned so as to avoid potential investor confusion arising from the presence of the unqualified post-qualification amendment on EDGAR.

Request for Comment

54. Should we, as proposed, amend Rule 259(b) to permit the Commission to declare a post-qualification amendment to an offering statement, abandoned, consistent with the rule applicable to registered offerings? Should we also provide notice to the issuer and a waiting period prior to declaring a post-qualification amendment abandoned, as is specified in Rule 479?

E. Offering and Investment Limits

As part of our broad review of the exempt offering framework, we examined the offering and investment limits established under Regulation A, Regulation Crowdfunding, and Rule 504 of Regulation D. These rules were developed with smaller issuers in mind to provide exemptions from Securities Act registration and ongoing Exchange Act reporting for securities offerings that comply with the respective exemptions. The exemptions set forth a variety of requirements and investor protections, including limits on the amount of securities that may be offered and sold under the exemptions. Regulation A and Regulation Crowdfunding also include limits on how much an individual may invest. While these rules were each developed to provide exemptive relief to smaller issuers, the exemptive limits vary considerably among the rules and may not reflect current capital raising trends.[231]

In the Concept Release, the Commission discussed Regulation A, Regulation Crowdfunding, and Rule 504 and requested comment on the rules generally and their respective exemptive limits.[232] In connection with that discussion, the Commission estimated that approximately $2.9 trillion of new capital was raised through exempt offering channels in 2018.[233] However, of this amount, less than $3 billion (0.1 percent) was raised under Regulation A, Regulation Crowdfunding, and Rule 504.[234] After considering the comments received, and based on our review of the current rules, we believe that increasing the offering and investment limits of these rules and better harmonizing the exemptions with each other could improve investor access to these markets and issuers' ability to raise capital. The following table summarizes the proposed changes to the offering and investor limits.

[230] 17 CFR 230.479.

[231] The Commission's Office of the Advocate for Small Business Capital Formation noted in its 2019 Annual Report that companies are seeking increased capital to fund early-stage operations, noting for example that average seed funding increased from $1.3 million in 2010 to $5.7 million in 2018. *See* Annual Report for Fiscal Year 2019: Office of the Advocate for Small Business Capital Formation, *available at https://www.sec.gov/files/2019_OASB_Annual%20Report.pdf.*

[232] *See* Concept Release, at Sections II.C, II.D, and II.F.

[233] *See* Concept Release, at Section II.

[234] *See* Table 2 of the Concept Release estimating the amounts raised under Regulation A ($736 million), Rule 504 ($2 billion), and Regulation Crowdfunding ($55 million). Preliminary estimates from 2019 similarly reflect limited capital raising under the rules with $1.042 billion raised under Regulation A, $228 million under Rule 504 and $62 million under Regulation Crowdfunding.

TABLE 9—PROPOSED CHANGES TO OFFERING AND INVESTMENT LIMITS

	Offering limits		Investment limits	
	Current rules (million)	Proposed rules (million)	Current rules	Proposed rules
Regulation A: Tier 1	$20	$20	None	None.
Regulation A: Tier 2	50	75	Accredited investors: No limits Non-Accredited Investors: Limits based on the greater of an income or net worth standard.	Accredited investors: No limits. Non-Accredited Investors: Limits based on the greater of an income or net worth standard.
Regulation Crowdfunding	1.07	5	All investors: Limits based on the lesser of an income or net worth standard.	Accredited investors: No limits. Non-Accredited Investors: Limits based on the greater of an income or net worth standard.
Rule 504 of Regulation D	5	10	None	None.

1. Regulation A

In 2015, the Commission adopted final rules to implement Section 401 of the JOBS Act by creating two tiers of Regulation A offerings: Tier 1, for offerings that do not exceed $20 million in a 12-month period; and Tier 2, for offerings that do not exceed $50 million in a 12-month period.[235] The Commission is required by Section 3(b)(5) of the Securities Act to review the Tier 2 offering limit every two years.

In the 2015 Regulation A Release, the Commission noted that some commenters suggested that the Commission raise the proposed $50 million Tier 2 offering limit to an amount above the statutory limit set forth in Section 3(b)(2); however, the Commission did not believe an increase was warranted at the time.[236] The Commission explained that, while Regulation A had existed as an exemption from registration for some time, the 2015 amendments were significant. Accordingly, the Commission believed that the 2015 amendments would provide for a meaningful addition to the existing capital formation options of smaller issuers while preserving important investor protections. The Commission also expressed concern about expanding the offering limit of the exemption beyond the level directly contemplated in Section 3(b)(2) at the outset of the adoption of the amendments.

Since adoption of the 2015 amendments, the Commission has continued to receive feedback on, and consider further enhancements to, Regulation A. For example, the 2017 and 2018 Small Business Forums recommended that the Commission increase the maximum offering amount under Tier 2 of Regulation A from $50 million to $75 million.[237] Similarly, a 2017 report by the Department of the Treasury also recommended that the Tier 2 offering limit be increased to $75 million.[238] In 2018, to implement changes mandated by Congress in the Economic Growth Act, the Commission amended Regulation A to permit Exchange Act reporting companies to rely on the exemption.[239] Most recently, in the Concept Release, the Commission requested comment on whether to increase the Regulation A offering limit. Comments were mixed, with some commenters supporting an increase in the offering limit [240] and others opposing an increase.[241]

Our Divisions of Corporation Finance and Economic and Risk Analysis conducted a 2020 Regulation A Lookback Study and Offering Limit Review Analysis (''2020 Regulation A Review'') as required by the 2015 Regulation A Release.[242] The 2020 Regulation A Review takes into consideration Regulation A market activity from the 2015 amendments through December 2019; public comment following the 2015 amendments and the Concept Release; and evidence from industry reports, the Small Business Forums, and other public sources. During this period, $2.4 billion was reported raised by 183 issuers in ongoing and closed offerings, including $230 million in Tier 1 and $2.2 billion in Tier 2 offerings.[243] While the 2015 amendments have stimulated the Regulation A offering market, aggregate Regulation A financing levels remain modest relative to traditional IPOs and the Regulation D market.[244] The 2020 Regulation A Review notes that these financing levels are likely related to a combination of factors, including the pool of issuers and investors drawn to the market under

[235] *See* 2015 Regulation A Release. *See also supra* Section I.B.2.

[236] *See* 2015 Regulation A Release, at text accompanying note 93.

[237] *See* 2018 Forum Report; and 2017 Forum Report.

[238] *See* A Financial System That Creates Economic Opportunities—Capital Markets (October 2017), *available at https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf* (''2017 Treasury Report'').

[239] *See* the 2018 Regulation A Release.

[240] *See, e.g.,* NYSBA Letter (supporting raising the threshold to $75 million); CrowdCheck Letter (supporting raising the threshold to $100 million); Goodwin Letter (supporting raising the threshold to $100 million); letter from OTC Markets dated September 24, 2019 (supporting raising the threshold and noting the 2017 and 2018 Small Business Forum and 2017 Treasury Report recommendations to raise the threshold to $75 million); and IPA Letter (supporting raising the threshold to $100 million).

[241] *See, e.g.,* State Attorneys General Letter; Davis Polk Letter; letter from the Council of Institutional Investors dated October 3, 2019 (expressing its belief that the Commission should not broaden or expand Regulation A without compelling evidence that the change would benefit long term investors and the capital markets); letter from Consumer Federation of America dated October 1, 2019 (''Consumer Federation Letter'') (suggesting that expansion of Regulation A has been bad for investors and markets); letter from Healthy Markets Association dated September 30, 2019 (''Healthy Markets Letter'') (suggesting amended Regulation A has been bad for investors and should be curtailed or eliminated); and NASAA Letter (generally rejecting expansion of the availability of private offerings and recommending more oversight by state regulators).

[242] *See https://www.sec.gov/smallbusiness/exemptofferings/rega/2020Report.* At the time of adoption of the 2015 amendments, the Commission stated that the staff would study and submit a report to the Commission no later than five years following the adoption of the amendments on the impact of both Tier 1 and Tier 2 offerings on capital formation and investor protection. *See* 2015 Regulation A Release. The report includes a review of: The amount of capital raised under the amendments; the number of issuances and amount raised by both Tier 1 and Tier 2 offerings; the number of placement agents and brokers facilitating the Regulation A offerings; the number of federal, state, or any other actions taken against issuers, placement agents, or brokers with respect to both Tier 1 and Tier 2 offerings; and whether any additional investor protections appear necessary for either Tier 1 or Tier 2.

[243] Over this time period issuers sought $11.2 billion across 487 offerings, of which 382 were qualified offering statements seeking up to $9.1 billion. *See* 2020 Regulation A Review.

[244] *See* 2020 Regulation A Review.

existing conditions; the availability to issuers of attractive private placement alternatives without an offering limit; the availability to investors of attractive investment alternatives outside of Regulation A with a more diversified pool of issuers; limited intermediary participation and a lack of traditional underwriting; and a lack of secondary market liquidity.[245]

The 2020 Regulation A Review estimates that approximately 10 percent of issuers in Tier 2 offerings have reached the $50 million offering limit across completed and ongoing offerings.[246] Although most issuers have not exhausted the existing Tier 2 offering limit, we believe there are compelling reasons to consider raising that limit. First, a higher offering limit, such as $75 million, may enhance capital formation for those Regulation A issuers that have exhausted existing offering limits.[247] Further, while the offering limit represents one factor in the use of Regulation A, issuers may choose to forgo Regulation A if the offering limit is too low for their financing needs. Evidence from public commentary since the 2015 amendments indicates that a higher offering limit may help attract a larger and potentially more seasoned pool of issuers and intermediaries[248] or institutional investors to the Regulation A market.[249] In addition, a higher offering limit may make Regulation A offerings more attractive to Exchange Act reporting companies, which may be more established companies.

Having considered the recent data, the 2020 Regulation A Review, feedback that the Commission received in response to the Concept Release and Small Business Forums, and in order to facilitate use of Tier 2 Regulation A offerings, we are proposing to increase the maximum offering amount under Tier 2 of Regulation A from $50 million to $75 million.[250] Consistent with the Commission's approach to limitations on secondary sales when adopting the Regulation A amendments, we are also proposing to increase the maximum offering amount for secondary sales under Tier 2 of Regulation A from $15 million to $22.5 million.[251] Although some commenters suggested raising the offering limit to $100 million,[252] we believe that raising the maximum offering amount to $75 million would provide an incremental approach to increasing the threshold to a level that would permit issuers that have exhausted existing offering limits to seek more capital under Regulation A and may help attract a larger pool of issuers and intermediaries to the Regulation A market.[253] In addition, we believe that the issuer eligibility requirements, content and filing requirements for offering statements, and ongoing reporting requirements for issuers in Tier 2 Regulation A offerings would continue to provide appropriate protections for investors at this higher offering limit.

Given the significant additional requirements for Tier 2 offerings, including the requirement to provide audited financial statements, the ongoing reporting requirements, and the investment limits for non-accredited investors, the Commission expected Tier 2 offerings to be national rather than local in nature.[254] While issuers in Tier 2 offerings are required to qualify offerings with the Commission before sales can be made pursuant to Regulation A, they are not required to register or qualify their offerings with state securities regulators. Section 18 of the Securities Act generally provides for preemption of state law registration and qualification requirements for ''covered securities.''[255] Section 18(b)(4)(D) of the Securities Act further provides that securities issued pursuant to Section 3(b)(2) of the Securities Act are covered securities if they are listed, or will be listed, on a national securities exchange or if they are offered or sold to a ''qualified purchaser,''[256] which the Commission has defined to include any person to whom securities are offered or sold in a Tier 2 offering.[257] We propose to rely on our authority under Section 18 of the Securities Act to continue to preempt Tier 2 offerings from state securities law registration and qualification requirements, as we expect that these offerings would continue to be more national in nature under the proposed amendments.

2. Rule 504

Rule 504 of Regulation D provides an exemption for eligible issuers[258] from registration under the Securities Act for the offer and sale of up to $5 million of securities in a 12-month period.[259] In 2016, the Commission amended Rule 504 to raise the aggregate amount of securities an issuer may offer and sell in any 12-month period from $1 million to $5 million, which is the maximum amount statutorily allowed under Securities Act Section 3(b)(1).[260] As discussed in the 2016 adopting release amending Rule 504, while a few commenters[261] and the 2015 Small Business Forum[262] recommended that the Commission increase the Rule 504 offering limit to $10 million, the Commission determined not to use its exemptive authority under Section 28 of the Securities Act to raise the maximum offering amount above $5 million at that time.

From 2009 through 2019, two percent of the capital raised in Regulation D offerings under $5 million by companies other than pooled investment funds was offered under Rule 504 (and under Rule

[245] *See id.*

[246] *See id.* at Table 4.

[247] Based on the available data, such issuers were almost exclusively real estate issuers. *See* 2020 Regulation A Review.

[248] *See* 2020 Regulation A Review, at Section F.1. However, as noted in the Regulation A review, the staff lacks data that would allow it to assess how a specific offering limit increase would affect the size and composition of the pool of prospective issuers, intermediaries, and investors in the Regulation A market.

[249] *See* NYSBA Letter suggesting that many institutional investors do not want to participate in smaller offerings where their holdings will constitute a disproportionately large percentage of the outstanding securities.

[250] We are not proposing to raise the threshold for Tier 1 offerings at this time. While the Commission has received feedback from market participants and commenters seeking an increase in the Tier 2 offering limit, these commenters did not seek an increase in the Tier 1 limit.

[251] The Commission observed in the Regulation A amendments proposing and adopting releases that selling security holder access to Regulation A has historically been an important part of the exemptive scheme. *See* Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act, Release No. 33–9497 (Dec. 18, 2013) [79 FR 3925 (Jan. 23, 2014)], at Section II.B.3; and 2015 Regulation A Adopting Release, at Section II.B.3.c. Consistent with existing and historical provisions of Regulation A, we are proposing to continue to permit secondary sales under Regulation A up to 30 percent of the maximum offering amount permitted under the applicable tier.

[252] *See* IPA Letter; and Goodwin Letter.

[253] Adjusted for inflation since enactment of the JOBS Act in April 2012, the staff estimates that the Tier 2 offering limit would be $55.845 million as of December 31, 2019. *See infra* note 411. We note that adjusting the existing offering limit for inflation would largely maintain the status quo and likely would not attract additional institutional investors, intermediaries, or traditional underwriters to the Regulation A market.

[254] *See* 2015 Regulation A Release, at text accompanying note 830.

[255] *See* 15 U.S.C. 77r(c).

[256] *See* 15 U.S.C. 77r(b)(4)(D).

[257] *See* 17 CFR 230.256.

[258] Issuers that are required to file reports under Exchange Act Section 13(a) or 15(d); investment companies; blank check companies; and issuers that are disqualified under Rule 504's ''bad actor'' disqualification provisions are not eligible to use Rule 504.

[259] *See* Rule 504.

[260] *See* Intrastate and Regional Offerings Release. In light of the increased offering threshold under Rule 504, the Commission repealed Rule 505. Most issuers previously using Rule 505 are able to conduct an offering up to $5 million under Rule 504.

[261] *See id.* at note 272.

[262] *See* Final Report of the 2015 SEC Government-Business Forum on Small Business Capital Formation (November 2015), *available at https://www.sec.gov/info/smallbus/gbfor34.pdf* (''2015 Forum Report'').

505, prior to its repeal), and 98 percent of the capital raised was offered under Rule 506.[263] Figure 1 and Figure 2 show the trends in new offerings and capital raised under Rules 504 and 505 (including pooled investment funds) during 2009–2019.[264]

Figure 1: Number of new offerings under Rules 504 and 505

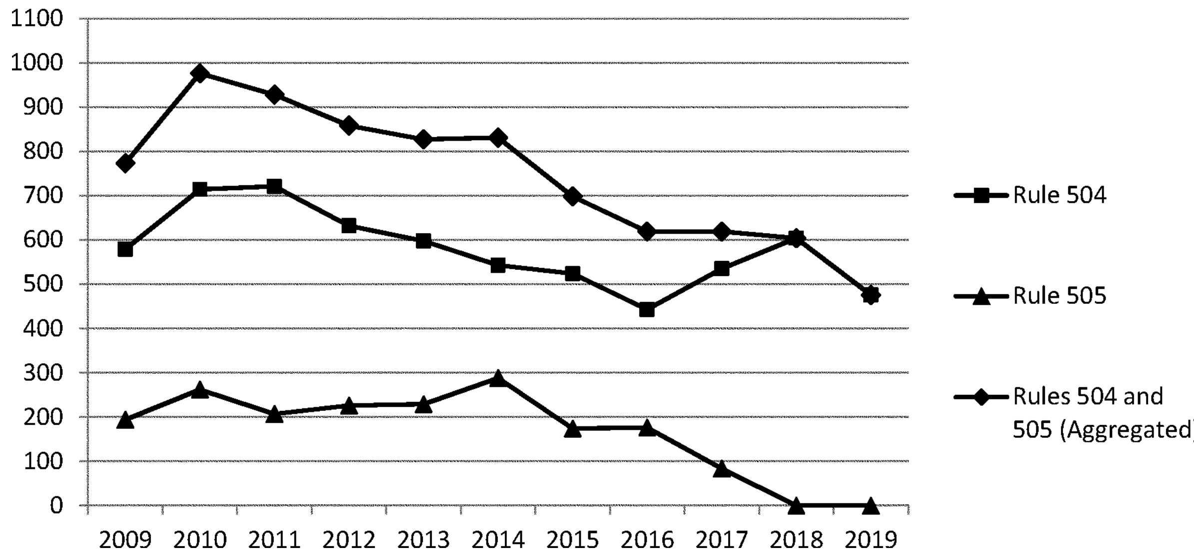
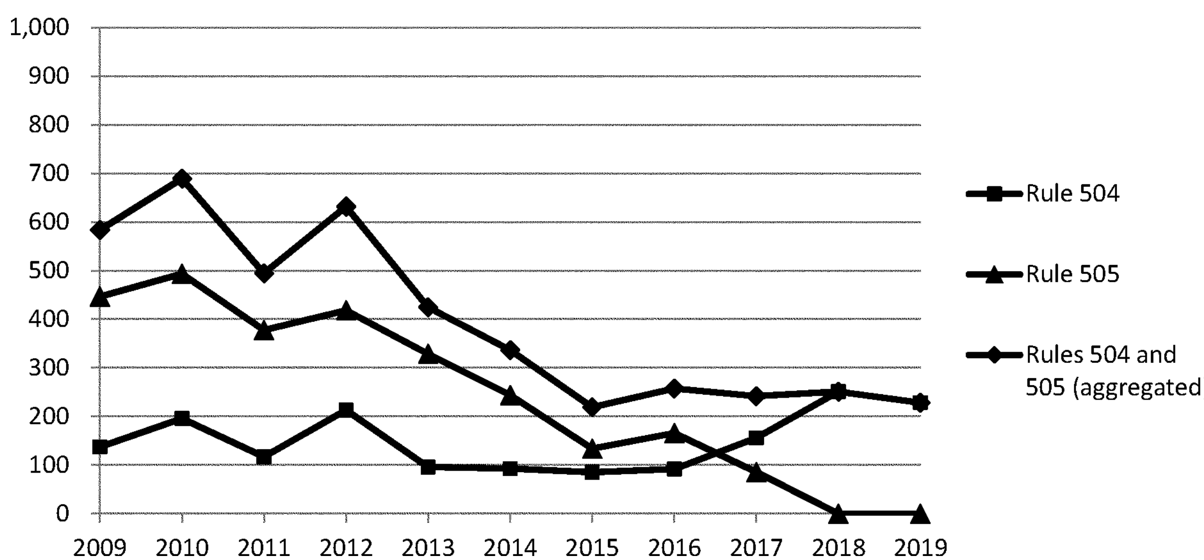


Figure 2: Capital raised under Rules 504 and 505 ($ billion)



The figures show that the number of new offerings and the capital reported raised has remained flat or declined since the adoption of the changes in 2016. This data suggests that the higher threshold limits have not encouraged more issuers to conduct new offerings under the Rule 504 exemption, although those using the exemption are able to raise more capital in each offering and in the aggregate.

[263] *See* Concept Release, at note 37 and accompanying text.

[264] Aggregate amounts shown here have been revised to cap several outliers identified in the Form D data on Rule 504 reported proceeds at the offer limit to address data noise.

In the Concept Release, the Commission requested comment on whether to increase the Rule 504 offering limit. One commenter supported increasing the limit to the current level,[265] while a few others opposed increasing the limit.[266] In addition, several commenters expressed concern generally with creation and expansion of exemptions and exceptions from the federal securities laws and broadly recommended against such action without further study.[267]

Given the limited number of issuers that have used amended Rule 504 to raise capital, we believe it may be appropriate to revisit the Commission's decision in 2016 not to raise the offering limit to $10 million, as several commenters suggested at that time.[268] In considering the appropriate offering limit, we have been mindful of the significant investor protections that accompany a Rule 504 offering. Specifically, Rule 504 is not available to a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company.[269] Also, unless certain conditions are met,[270] issuers relying on Rule 504 may not use general solicitation or general advertising to market the securities, and purchasers in a Rule 504 offering will receive securities that are subject to the resale limitations in Rule 502(d).[271] If the conditions in Rule 504(b)(1)(i) through (iii) are met, any non-accredited investors will receive substantive disclosure documents made in accordance with state law. In addition, ''bad actor'' disqualification and disclosure requirements apply.[272] Finally, Rule 504 offerings, like other exempt offerings, are subject to the federal antifraud provisions.

Based on the recent data, feedback that we received, and in order to facilitate the use of Rule 504, we are proposing to use our general exemptive authority under Securities Act Section 28 to raise the maximum offering amount under Rule 504 from $5 million to $10 million. We believe that raising the threshold would permit issuers to seek more capital at a lower marginal cost than under the current rule and may encourage regional multistate offerings and the use of state coordinated review programs, resulting in more issuers conducting offerings under the exemption, which would further increase investment opportunities for investors and the amount of capital raised under Rule 504.

3. Regulation Crowdfunding

The Commission adopted Regulation Crowdfunding in 2015.[273] Regulation Crowdfunding provides an exemption from registration for certain crowdfunding transactions that raise up to $1.07 million in a 12-month period. To qualify for the exemption, transactions must meet a number of statutory requirements, including limits on the amount an issuer may raise, limits on the amount an individual may invest and a requirement that the transactions be conducted through an intermediary that is registered as either a broker-dealer or a ''funding portal.''

In 2019, the Commission staff undertook a study of the available information on the capital formation and investor protection impacts of Regulation Crowdfunding and summarized quantitative information, where it was available to the staff, as well as qualitative observations of Commission staff and FINRA staff, and input from market participants regarding their experience with Regulation Crowdfunding.[274]

The study found that during the considered period, while the market exhibited growth from 292 offerings initiated in the first year after adoption to over 500 offerings in the second year, the number of offerings and the total amount of funding were relatively modest.[275] From May 16, 2016 through December 31, 2018 approximately 1,351 offerings were initiated under Regulation Crowdfunding and 519 were completed.[276] These offerings raised $108 million for issuers. In contrast, over the same period approximately 12,700 issuers relied on Regulation D to conduct offerings of up to $1.07 million (the 12-month limit under Regulation Crowdfunding), totaling approximately $4.5 billion.[277]

The study also found that the typical offering during the considered period was small and raised less than the 12-month offering limit.[278] Of the offerings that were reported as completed based on a review of progress updates on Form C–U, as of December 2019, Commission staff estimated that the average offering raised approximately $213,678 and that just under 30 issuers reported raising at least $1.07 million over the considered period (aggregating multiple offerings for issuers that conducted more than one offering). Despite few issuers meeting the offering limit, we have received feedback from market participants and observers supporting a higher offering limit and note that the offering limit may not reflect current capital raising trends.[279] In addition, some intermediaries suggested that, while few offerings reach the current limit, many issuers choose not to utilize the crowdfunding exemption because the limit is too low.[280] In contrast, one intermediary stated that the current $1.07 million offering limit is appropriate, noting that most offerings are well below that level, and another intermediary indicated that few potential issuers have expressed interest in raising amounts above the limit.[281]

[265] *See* letter from Conserve Financial, Inc., dated September 1, 2019 (supporting increasing the limit, but mistakenly recommending an increase from $1 million to the current $5 million offer limit).

[266] *See, e.g.,* PIABA Letter; and NASAA Letter (recommending Rule 504 be preserved in its current form).

[267] *See* Consumer Federation Letter; Healthy Markets Letter; and State Attorneys General Letter.

[268] *See* Exemptions to Facilitate Intrastate and Regional Securities Offerings, Release. No. 33–9973 (Oct. 30, 2015) [80 FR 69786 (Nov. 10, 2015)], at Section III.B.2.

[269] *See* Rule 504(a)(3).

[270] *See* Rule 504(b)(1)(i) through (iii). General solicitation and general advertising are permitted and the resale limitations in Rule 502(d) do not apply if the issuer offers and sells the securities exclusively under state laws that require registration and the public filing and delivery to investors of a substantive disclosure document before sale; or in one or more states that do not have a provision requiring registration or the public filing and delivery of a disclosure document before sale under certain conditions. In states that do not have a provision requiring registration or the public filing and delivery requirements, general solicitation and general advertising are permitted so long as: The securities have been registered in at least one other state that provides for such registration, public filing, and delivery before sale; the issuer offers and sells securities in that other state under those provisions; and the issuer delivers to all purchasers in any state the disclosure documents mandated by the state in which it registered the securities; or exclusively in a state according to an exemption in such state that permits general solicitation and advertising, so long as sales are made only to accredited investors.

[271] *See* Rule 502(d).

[272] *See* Rule 504(b)(3); *see also* Intrastate and Regional Offerings Release, at Section III.B.3.

[273] *See* Crowdfunding Adopting Release.

[274] *See* Report to the Commission: Regulation Crowdfunding (June 18, 2019), *available at https://www.sec.gov/files/regulation-crowdfunding-2019_0.pdf* (''2019 Regulation Crowdfunding Report'').

[275] *See id.*

[276] *See id.* at 15.

[277] *See* Concept Release, at Section II.F.4.

[278] *See* 2019 Regulation Crowdfunding Report, at Section I.

[279] *See, e.g.,* 2017 Treasury Report, at 41 (recommending ''increasing the limit on how much can be raised over a 12-month period from $1 million to $5 million, as it will potentially allow companies to lower the offering costs per dollar raised''); 2017 Forum Report, at 18 (recommending a $5 million limit); and 2019 Forum Report (recommending that the Commission ''raise the maximum limit on the overall deal.''). *See also supra* note 231 citing average seed funding increasing from $1.3 million in 2010 to $5.7 million in 2018.

[280] *See* 2019 Regulation Crowdfunding Report, at 37.

[281] *Id.*

Regulation Crowdfunding also limits the amount individual investors are allowed to invest to no more than $107,000 across all Regulation Crowdfunding offerings over the course of a 12-month period. In addition, individual investors are further limited below $107,000 to:

• The greater of $2,200 or five percent of the lesser of the investor's annual income or net worth, if either of an investor's annual income or net worth is less than $107,000; or

• Ten percent of the lesser of his or her annual income or net worth, if both annual income and net worth are equal to or more than $107,000.[282]

Information on amounts invested by an average investor or the number of investors per offering is not available for the full sample of Regulation Crowdfunding offerings. However, information on offerings from one intermediary from May 2016 through September 2018 provides some insight into the typical investment size, investor composition, and number of investors in crowdfunding offerings.[283] In the sample, accredited investors comprised approximately nine percent of investors and accounted for approximately 40 percent of amounts invested in funded offerings.[284] Information provided by this and other intermediaries indicates that amounts invested did not generally reach investment limits.[285]

A number of market participants and observers have expressed concerns about the investment limits.[286] The 2018 Small Business Forum recommended that the Commission increase the investment limits for all investors,[287] and the 2017, 2018, and 2019 Small Business Forums, the SEC Small Business Capital Formation Advisory Committee, and the 2017 Treasury Report all recommended that the investment limits not apply to accredited investors, who face no such limits under other exemptions.[288] Alternatively, some market participants recommended basing the limits on the greater of the investor's net worth or income, noting that the accredited investor definition only requires the investor to meet *either* the net worth *or* the income standard.[289] This change would be similar to Regulation A, where accredited investors are not limited in the amount of securities they may purchase and other investors are limited to purchasing in a Tier 2 offering no more than: (a) Ten percent of the greater of annual income or net worth (for natural persons); or (b) ten percent of the greater of annual revenue or net assets at fiscal year-end (for non-natural persons).[290]

In the Concept Release, the Commission requested comment on whether to increase the Regulation Crowdfunding offering limit and investment limits.[291] Numerous commenters supported raising the offering limit,[292] while some opposed an increase.[293] Several commenters additionally supported eliminating the investment limit for accredited investors,[294] while a few also opposed changing the investment limit.[295] Comments were mixed regarding whether to calculate the investment limit based on *either* income *or* net worth, with some commenters supporting,[296] and others opposing [297]

[282] *See* Rule 100(a)(2).

[283] This information is not required to be reported in progress updates, but the intermediary was able to provide information on approximately 31,500 unique crowdfunding investors in this sample that used the platform during the considered period. *See* 2019 Regulation Crowdfunding Report, at III.C.2.b.

[284] *See* 2019 Regulation Crowdfunding Report, at Section III.C.2.b.

[285] *See id.* For investors where data on annual income and net worth was available, the amounts invested over the entire considered period did not reach investments limits. Data from intermediaries reflected that the average investment per issuer was generally less than $1,000; however, the staff was unable to determine whether these investors also invested in crowdfunding offerings through other crowdfunding platforms. Thus, these estimates are likely to represent a lower bound on average investment amounts.

[286] *See, e.g.,* 2017 Treasury Report; and 2018 Forum Report.

[287] *See* 2018 Forum Report.

[288] *See, e.g.,* 2017 Treasury Report, at 41; 2018 Forum Report; 2017 Forum Report, at 17; Recommendation of the SEC Small Business Capital Formation Advisory Committee regarding Regulation Crowdfunding (Dec. 13, 2019), *available at https://www.sec.gov/spotlight/sbcfac/recommendation-regulation-crowdfunding.pdf* (''2019 Small Business Advisory Committee Recommendation on Crowdfunding''). *See also* 2015 Forum Report (recommending increasing the investment limit for accredited investors). In conjunction with removing the investment limits for individual accredited investors, the 2018 Small Business Forum recommended verification of accredited investor status.

[289] *See id.*

[290] *See* 17 Rule 251(d)(2)(i)(C). This limit does not, however, apply to purchases of securities that will be listed on a national securities exchange upon qualification.

[291] *See* Concept Release, at Section II.F.

[292] *See, e.g.,* AOIP Letter (recommending raising the threshold to $10 million and suggesting there is negative selection bias as quality companies seeking larger amounts of capital are discouraged by the lower threshold); letter from Hamilton & Associates Law Group, P.A. dated August 15, 2019; Wefunder Letter (recommending a $5 million offering limit); Republic Letter (recommending raising the limit to $10 or $5 million and suggesting the current limits impair the utility of Regulation Crowdfunding, discourage issuers from using the exemption and negatively impact the ability of portals to sustain their business); Indemnis et al. Letter; CCMC Letter (suggesting the low upper limit discourages issuers and recommending a $5 million offering limit); A. Schwartz Letter (recommending a $5 million offering limit); letter from Herwig Konings, et al. dated September 24, 2019 (''H. Konings et al. Letter'') (recommending a $5 million offering limit); CCA Letter (recommending a $20 million offering limit in place of Regulation A Tier I offerings); MainVest Letter (recommending a $5 million offering limit and supporting financial review for companies raising over $500,000 and an audit for those that have raised at least $500,000); Silicon Prairie Letter (recommending the offering limit be the maximum of the other exemptions); 2019 Small Business Advisory Committee Recommendation on Crowdfunding; and Rep. McHenry Letter.

[293] *See* Consumer Federation Letter (opposing any expansion prior to the Commission examining non-compliance and remedying deficiencies in the crowdfunding markets); and Healthy Markets Letter (urging the Commission to pause the creation and expansion of exemptions and exceptions to the federal securities laws). *See also* State Attorneys General Letter (recommending that before making any modifications to the current exemptions, the Commission gather data on issuer and investor outcomes as well as retail investor demand for exempt offerings, and analyze how the current framework is impacting each of those categories); NASAA Letter (recommending not expanding the market without corresponding regulations that will increase protections for investors); and CrowdCheck Letter.

[294] *See, e.g.,* AOIP Letter; Wefunder Letter; Republic Letter (recommending intermediaries being required to take reasonable steps to verify accredited investor status); Indemnis et al. Letter; A. Schwartz Letter; C. Bilger Letter; Davis Polk Letter; CCA Letter; Rep. McHenry Letter; 2019 Small Business Advisory Committee Recommendation on Crowdfunding; and CrowdCheck Letter. *See also* letter from Startup Practicum at the University of Miami School of Law (''Startup Practicum Letter'') (recommending higher limits for accredited investors); and MainVest Letter (recommending a $250,000 investment limit).

[295] *See* Consumer Federation Letter; Healthy Markets Letter; and State Attorneys General Letter.

[296] *See, e.g.,* AOIP Letter (recommending the elimination of cumulative investment limits); Republic Letter (recommending using the greater of two thresholds and applying the limits on a per offering basis); C. Bilger Letter; CCA Letter; MainVest Letter (noting investor confusion regarding the investor limits and supporting mirroring the logic for requirements for investor accreditation and providing more investors access to investment opportunities); and 2019 Small Business Advisory Committee Recommendation on Crowdfunding (recommending investment limits apply on a per investment basis rather than annual limits, and calculating limits based upon the greater of income or net worth). *See also* Indemnis et al. Letter (not specifically addressing this issue, but recommending raising the limits and applying the limits on a per offerings basis); CCMC Letter (not specifically addressing the issue, but supporting raising the current limits); A. Schwartz Letter (recommending an individual investment limit of $5,000 per investment as a simplification of the current rule that does not seek sensitive financial information); Davis Polk Letter (recommending harmonizing limits on investment amounts for non-accredited investors across all exempt offerings); and Silicon Prairie Letter (recommending raising the limits for non-accredited investors to $10,000 or the use of a suitability test).

[297] *See, e.g.,* Startup Practicum Letter (supporting the current limits for non-accredited investors); Wefunder Letter (suggesting that the focus should be on issuer quality, not investment limits, but recommending rationalizing the limits with other exemptions, such as using the Regulation A Tier 2 limit for non-accredited investors). *See also*

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changes to the investment limit calculations.

Based on our consideration of the available data, our staff's 2019 Regulation Crowdfunding Report, the feedback that we received on the Concept Release and from Small Business Forums and the Small Business Capital Formation Advisory Committee, and in order to facilitate use of Regulation Crowdfunding for capital raising, we are proposing to: (1) Raise the issuer offering limits in Regulation Crowdfunding; and (2) increase the investment limits by no longer applying those limits to accredited investors and allowing investors to rely on the greater of their income or net worth in calculating their investment limit.

We are proposing to use our general exemptive authority under Securities Act Section 28 to raise the offering limit in Regulation Crowdfunding from $1.07 million to $5 million. Securities Act Section 4(a)(6) currently sets the maximum offering limit at $1.07 million ($1.0 million adjusted to reflect changes in the Consumer Price Index).[298] While over 500 offerings were completed pursuant to Regulation Crowdfunding in the first year and a half that the exemption was available, market participants have expressed concern that the vitality of the market and the number of offerings is being constrained by the $1.07 million offering limit. We believe that permitting larger offerings under Regulation Crowdfunding may encourage more issuers to use the exemption and additionally would lower the offering costs per dollar raised for issuers. In so doing, these amendments would provide issuers with greater access to investment capital and investors in Regulation Crowdfunding offerings with more investment opportunities. At the same time, we believe raising the offering limit would be consistent with investor protection because existing Regulation Crowdfunding requirements, including the intermediary requirements and the eligibility, disclosure, and ongoing reporting requirements for issuers would continue to provide appropriate investor protections at this higher offering limit.

Regulation Crowdfunding's financial statement requirements are based on the amount offered and sold in reliance on the exemption within the preceding twelve month period, with progressively increasing requirements and involvement of outside accountants as offering size increases.[299] While we are proposing to increase the overall offering limits, we do not believe that it is necessary to adjust or increase the financial statement requirements at this time. Any offerings in excess of the current $1,070,000 offering limit would continue to be subject to the financial statement requirements of Rule 201(t)(3). We believe that this standard, which (1) requires the provision of audited financial statements similar to the requirements for other exempt offerings with higher offering limits and (2) currently applies to issuers offering more than $535,000 of their securities, would be sufficient for offerings subject to the increased $5 million offering limit.

We are also proposing to increase the investment limits for investors in Regulation Crowdfunding offerings.[300] First, we are proposing to no longer apply any investment limits to accredited investors. When the Commission considered investment limits for Tier 2 Regulation A offerings, it determined that such limitations were unnecessary for accredited investors because these individuals satisfy certain criteria that suggest they are capable of protecting themselves in transactions that are exempt from registration under the Securities Act.[301] For similar reasons, we believe that investment limits for accredited investors under Regulation Crowdfunding are unnecessary. Accordingly, we believe it would be appropriate in the public interest and consistent with the protection of investors to treat accredited investors under Regulation Crowdfunding in the same manner as other exempt offerings.

Second, we are proposing to amend the Regulation Crowdfunding calculation method for the investment limits for non-accredited investors to allow them to rely on the greater of their annual income or net worth. Currently, Regulation Crowdfunding imposes a limit that is the lesser of a percentage of the investor's annual income or net worth subject to an absolute maximum of $107,000.[302] When adopting Regulation Crowdfunding, the Commission considered whether to use a ''greater of'' or ''lesser of'' standard for the exemption's investment limits and determined to use the ''lesser of'' standard at that time due to concerns about investors incurring unaffordable losses.[303] By contrast, when the Commission considered investment limits for Tier 2 Regulation A offerings, it determined to permit investors to look to a percentage of the greater of their annual income or net worth.[304] At that time, the Commission indicated that limiting the amount of securities that a non-accredited investor can purchase in a particular Tier 2 offering should help to mitigate concerns that such investors may not be able to absorb the potential loss of the investment and that a limitation based on a percentage of the greater of such investor's net worth/net assets and annual income/revenue is generally consistent with similar maximum investment limitations placed on investors in Title III of the JOBS Act and would help set a loss limitation standard in such offerings.[305]

The proposed amendment would conform Regulation Crowdfunding with Tier 2 of Regulation A and use a consistent approach to mitigate concerns regarding the ability of investors to absorb losses incurred in offerings conducted in reliance on the two exemptions. While the Commission used a ''lesser of'' standard when initially implementing the rule, in light of our experience with Regulation Crowdfunding since its adoption and the concerns of commenters that the existing investment limits may be hampering the utility of the exemption,[306] we now believe it is appropriate to consider a less restrictive approach. By permitting investors to use the greater of the income or net worth threshold, investors would have more flexibility in making their investment decisions. Moreover, we are not aware

Consumer Federation Letter; Healthy Markets Letter; State Attorneys General Letter; and H. Konings, et al. Letter (both supporting the current investor limits, and suggesting that they could be simplified to a single $25,000 investor yearly limit or a tiered cap base on income).

[298] *See* 15 U.S.C. 77d(a)(6) and 15 U.S.C. 77d–1(h). *See also* Rule 100(a)(1) of Regulation Crowdfunding.

[299] *See* Rule 201(t) of Regulation Crowdfunding.

[300] Consistent with the current approach to investment limits, an issuer would be able to rely on efforts that an intermediary is required to undertake in order to determine that the investor is an accredited investor, or that the aggregate amount of securities purchased by an investor does not cause the investor to exceed the investment limits, provided that the issuer does not have knowledge that the investor had exceeded, or would exceed, the investment limits as a result of purchasing securities in the issuer's offering. *See* Instruction 3 to Rule 100(a)(2) of Regulation Crowdfunding.

[301] *See* 2015 Regulation A Release, at note 145 and accompanying text.

[302] Rule 100(a)(2) of Regulation Crowdfunding is based on the requirement in Section 4(a)(6) that provides an exemption where the aggregate amount sold to an investor by an issuer does not exceed a given percentage of the annual income or net worth of such investor. The statutory language does not expressly provide that the investor use the lesser of annual income or net worth.

[303] *See* Crowdfunding Adopting Release, at Section II.A.2.c.

[304] *See* Rule 251(d)(2)(i)(C)(2); and 2015 Regulation A Release, at Section II.B.4.

[305] *See* Section 301 of the JOBS Act; and 2015 Regulation A Release, at notes 161 and 162 and accompanying text.

[306] *See, e.g.,* Republic Letter; CCA Letter; and MainVest Letter.

of evidence since Regulation Crowdfunding's adoption to indicate this market requires a more stringent approach to investment limits than other exemptive regimes.[307]

Request for Comment

55. Should we, as proposed, increase the Regulation A Tier 2 offering limit from $50 million to $75 million? Is another limit more appropriate, such as $100 million? What are the appropriate considerations in determining a maximum offering size? In connection with an increase, should we consider additional investor protections, such as aligning standards for when an amendment to an offering statement is required with those in registered offerings? Should we instead simply adjust the offering limit for inflation?

56. Should we increase the Regulation A Tier 1 offering limit? Alternatively, we note that there is significant overlap between Rule 504 and Regulation A Tier 1 offerings. Should the threshold for Rule 504 be raised to $20 million such that Rule 504 might serve as a replacement for Regulation A Tier 1 offerings? If so, should we eliminate Tier 1 of Regulation A?

57. Would increasing the maximum offering size encourage more issuers to undertake Regulation A offerings? Would it attract more institutional investors to the market?

58. Would increasing the maximum offering size increase the risk to investors? Is there any data available that shows an increase or decrease in fraudulent activity in the Regulation A market as a result of the 2015 or 2018 amendments?

59. Should we, as proposed, increase the Rule 504 offering limit from $5 million to $10 million? Is another limit more appropriate? Would the increased offering limit encourage more regional multistate offerings and state coordinated review programs? Are there additional investor protections we should consider in connection with an increase?

60. Should we, as proposed, increase the Regulation Crowdfunding offering limit from $1.07 million to $5 million? Is another limit more appropriate? Would increasing the limit encourage more issuers to use Regulation Crowdfunding? Are there additional investor protections we should consider in connection with the increase?

61. In conducting our review and analysis of exempt offerings, we and our staff relied on data collected from filings with the Commission and third party data sources.[308] In order to better analyze the exempt offering markets, should we consider ways to enhance compliance with Form D filing requirements?

62. Should we remove investment limits for accredited investors in Regulation Crowdfunding offerings as proposed? If so, should we require verification of accredited investor status, as suggested by several commenters? Should the limits be modified in some other way?

63. Should we amend the method for calculating the investment limits for non-accredited investors in Regulation Crowdfunding to allow those investors to rely on the greater of their annual income or net worth as proposed? Is there any evidence to suggest that a more restrictive approach to investment limits is warranted for Regulation Crowdfunding offerings? Should we align the non-accredited investor limits in Regulation Crowdfunding with those in Regulation A Tier 2?

64. The 2017 and 2018 Small Business Forums recommended that the Commission amend Regulation Crowdfunding requirements for debt offerings and small offerings under $250,000, such as by limiting the ongoing reporting obligations to actual investors instead of the general public, and scaling the requirements to reduce accounting, legal and other costs of the offering. Further, the 2019 Small Business Forum recommended that the Commission should provide an exemption for investments of less than $25,000 for up to 35 non-accredited investors, where all investors have access to the same disclosures about the issuer. Should we consider creating a ''micro-offering'' tier of Regulation Crowdfunding consistent with these recommendations? If so, should that micro-offering exemption be limited to offerings of debt securities conducted through an intermediary, but with no specific disclosure requirements? Would an aggregate offering limit be appropriate, such as $250,000, as recommended by the 2017 and 2018 Small Business Forums? Should such a micro-offering be available to non-accredited investors? If so, should there be a limit on the number of non-accredited investors that may participate? Should there be any limit on how much a person can invest in any one offering or in all such offerings during a specified time period?

65. Should we extend federal preemption to secondary sales of Regulation A or Regulation Crowdfunding securities, for example, by expanding the definition of ''qualified purchaser''? Several Small Business Forums, as well as the Commission's Advisory Committee on Small and Emerging Companies, have recommended that the Commission provide blue sky preemption for secondary trading of securities issued under Tier 2 of Regulation A.[309] Should we preempt state securities registration or other requirements applicable to secondary sales of all securities initially issued in a Tier 2 Regulation A offering? Should we preempt state securities registration or other requirements applicable to secondary trading of securities only of Regulation A Tier 2 issuers that are current in their ongoing reports? Should we similarly preempt state securities registration or other requirements applicable to secondary trading of securities of initially issued in a Regulation Crowdfunding offering? Should such preemption only apply if the Regulation Crowdfunding issuer is current in its ongoing reports? What other steps should we consider to improve secondary trading liquidity of securities exempt from registration under Regulation A or Regulation Crowdfunding?

F. Regulation Crowdfunding and Regulation A Eligibility

The Commission's exempt offering framework includes eligibility restrictions. Specific eligibility restrictions excluding certain types of entities or activities by issuers apply to both Regulation A[310] and Regulation

[307] *See* 2019 Regulation Crowdfunding Report, at Section III.C.3.

[308] *See supra* notes 12 and 13.

[309] *See* 2019 Forum Report (recommending federal preemption for all resales of securities sold in a Regulation A Tier 2 offering, provided that the issuer is current in its Tier 2 reporting); 2018 Forum Report; 2017 Forum Report; 2016 Forum Report; 2015 Forum Report; Final Report of the 2014 SEC Government-Business Forum on Small Business Capital Formation (May 2015), *available at http://www.sec.gov/info/smallbus/gbfor33.pdf* (''2014 Forum Report''); Advisory Committee on Small and Emerging Companies: Recommendations Regarding Secondary Market Liquidity for Regulation A, Tier 2 Securities (May 15, 2017) available at *https://www.sec.gov/info/smallbus/acsec/acsec-recommendation-051517-secondary-liquidityrecommendation.pdf.* The 2017 Treasury Report also recommended that state securities regulators update their regulations to exempt from state registration and qualification requirements secondary trading of securities issued under Tier 2 of Regulation A or, alternatively, that the Commission use its authority to preempt state registration requirements for such transactions.

[310] *See* 17 CFR 230.251(b). Regulation A is not available to: Issuers that are organized in or have their principal place of business outside of the United States or Canada; investment companies registered or required to be registered under the Investment Company Act or BDCs; blank check companies; issuers of fractional undivided interests in oil or gas rights, or similar interests in other mineral rights; issuers that are required to, but that have not, filed with the Commission the ongoing

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Crowdfunding,[311] respectively. While Regulation Crowdfunding does not restrict the types of securities eligible to be sold under the exemption, the types of securities eligible for sale under Regulation A are limited to equity securities, debt securities, and securities convertible or exchangeable to equity interests, including any guarantees of such securities.[312] Regulation A also specifically excludes asset-backed securities.[313]

We are proposing amendments to the eligibility restrictions in Regulation Crowdfunding and Regulation A. We are proposing to amend Regulation Crowdfunding to permit the use of certain special purpose vehicles to facilitate investing in Regulation Crowdfunding issuers, and to limit the securities eligible to be sold under Regulation Crowdfunding. We are additionally proposing to amend Regulation A to harmonize its eligibility restrictions by excluding Exchange Act registrants that are delinquent in their Exchange Act reporting obligations from relying on the exemption.

Table 10 below summarizes the proposed changes to the eligible issuers and securities under Regulation Crowdfunding and Regulation A:

TABLE 10—SUMMARY OF PROPOSED CHANGES TO ELIGIBILITY UNDER REGULATION CROWDFUNDING AND REGULATION A

	Eligible issuers		Eligible securities	
	Current rules	Proposed rules	Current rules	Proposed rules
Regulation Crowdfunding.	Excludes special purpose vehicles.	Permits crowdfunding vehicles.	No limits on types of securities.	Securities limited to: • Equity securities. • Debt securities. • Securities convertible or exchangeable for equity interests. • Guarantees of any of the above-listed securities.
Regulation A	Excludes issuers that have not filed required reports in the two prior years under Regulation A.	Excludes issuers that have not filed required reports in the two prior years under Regulation A or Section 13 or 15(d) of the Exchange Act.	Securities limited to: • Equity securities. • Debt securities. • Securities convertible or exchangeable for equity interests. • Guarantees of any of the above-listed securities.	No change.

1. Regulation Crowdfunding Eligible Issuers

Section 4A(f)(3) of the Securities Act prohibits investment companies, as defined in the Investment Company Act (or companies that are excluded from the definition of an investment company under section 3(b) or 3(c) of the Investment Company Act), from using the Regulation Crowdfunding exemption.[314] As a result, issuers may not use special purpose vehicles that invest in a single company (''SPVs'') that are investment companies (or companies that are excluded from the definition of an investment company under section 3(b) or 3(c) of the Investment Company Act) to conduct Regulation Crowdfunding offerings. Thus, an investor purchasing securities in an offering under Regulation Crowdfunding must hold the securities in his or her own name, which, as discussed below, can create certain practical impediments to issuers' use of the exemption. When adopting Regulation Crowdfunding, the Commission did not create, as suggested by some commenters, an exception to this statutory prohibition that would have allowed a single purpose fund organized to invest in, or lend money to, a single company, to use Regulation Crowdfunding.[315] In explaining its decision, the Commission stated that the primary purpose of Section 4(a)(6) is to facilitate capital formation by early stage companies that might not otherwise have access to capital, and expressed its belief that investment companies did not constitute the type of issuer that Section 4(a)(6) and Regulation Crowdfunding were intended to benefit.[316]

Since the adoption of Regulation Crowdfunding, the Commission has received comments and recommendations from a variety of sources, including certain of the annual Small Business Forums,[317] the 2017 Treasury Report,[318] and the Small Business Capital Formation Advisory

reports required by the rules under Regulation A during the two years immediately preceding the filing of a new offering statement (or for such shorter period that the issuer was required to file such reports); issuers that are or have been subject to an order by the Commission denying, suspending, or revoking the registration of a class of securities pursuant to Section 12(j) of the Exchange Act that was entered within five years before the filing of the offering statement; or issuers subject to ''bad actor'' disqualification under 15 CFR 230.262.

[311] Section 4A specifically excludes: Non-U.S. issuers; issuers that are required to file reports under Exchange Act Section 13(a) or 15(d); certain investment companies; and other issuers that the Commission, by rule or regulation, determines appropriate. *See* 15 U.S.C. 77d–1. Regulation Crowdfunding further excludes: Issuers disqualified under disqualification provisions that are substantially similar to those in Rule 506(d); issuers that have failed to comply with the annual reporting requirements under Regulation Crowdfunding during the two years immediately preceding the filing of the offering statement; and blank check companies. *See* 17 CFR 227.100(b).

[312] *See* 17 CFR 230.261.

[313] *See* Rule 251 (providing that only ''eligible securities'' can be offered or sold under Regulation A) and Rule 261 (defining ''eligible securities''). An asset-backed security generally means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders. *See* 17 CFR 229.1101(c).

[314] *See* Section 4A(f)(3) of the Securities Act [17 CFR 227.100(b)(3)].

[315] *See* Crowdfunding Adopting Release, at 71397.

[316] *Id.*

[317] *See* 2017 Forum Report. *See also* 2014 Forum Report (commenting on the proposing release for Regulation Crowdfunding).

[318] *See* 2017 Treasury Report.

Committee[319] on the potential benefits of allowing an SPV to conduct a crowdfunding offering. In particular, public feedback has indicated that allowing the use of such vehicles could address concerns associated with managing the potentially large number of direct investors that could result from a crowdfunding offering, as those investments would be held through a single purpose entity.

The 2017 Small Business Forum recommended that the Commission consider promoting simplification of the capitalization table of Regulation Crowdfunding issuers by allowing the use of SPVs to aggregate investors with appropriate conditions.[320] Similarly, the 2017 Treasury Report recommended allowing the use of SPVs advised by a registered investment adviser, which may mitigate crowdfunding issuers' concerns about vehicles having an unwieldy number of shareholders and surpassing the registration thresholds of Section 12(g).[321] However, the 2017 Treasury Report also recognized that it is critical to ensure appropriate investor protections if any changes are made to Regulation Crowdfunding, given the participation of non-accredited investors. In light of risks that SPVs may weaken investors' ability to avail themselves of protections available to direct investors, as well as potential conflicts of interest between the issuer, lead investors, and other investors, the 2017 Treasury Report recommended that any rulemaking in this area prioritize: (1) Alignment of interests between a lead investor and the other investors participating in the SPV; (2) regular dissemination of information from the issuer; and (3) minority voting protections with respect to significant corporate actions.[322]

In connection with the 2019 Regulation Crowdfunding Report, the staff received similar feedback from market participants regarding certain issues that may be discouraging companies from raising capital through the exemption. As discussed in the 2019 Regulation Crowdfunding Report, some intermediaries have told the staff that many issuers have elected not to pursue an offering under Regulation Crowdfunding because, without an SPV, a large number of investors on an issuer's capitalization table can be unwieldy and potentially impede future financing. These intermediaries frequently noted that allowing SPVs to participate in Regulation Crowdfunding offerings may encourage use of the exemption because it would help the issuer manage the size of its capitalization table. Similarly, some intermediaries have reported that issuers may be hesitant to offer voting rights to investors in offerings under this exemption because of the logistical challenges of seeking any required shareholder vote. In addition, several market participants pointed to the other potential investor protections that an SPV structure could provide. For example, some commenters noted that an SPV could allow small investors to invest alongside a sophisticated lead investor who may negotiate better terms, protect against dilution by negotiating during subsequent financings, mentor the issuer, and represent smaller investors on the board.

Many of these views were echoed by commenters on the Concept Release. For example, several commenters stated that private companies do not use Regulation Crowdfunding to raise capital because the capitalization table becomes unwieldy with several hundred investors, and it is difficult to obtain consent or approval from hundreds of investors as it relates to governance issues, strategic decisions, and later financing rounds.[323] These commenters urged the Commission to permit issuers to raise capital under Regulation Crowdfunding through an SPV to address these concerns.[324] Some commenters suggested that the Commission require a registered investment adviser to manage the SPV to provide protection for the SPV's investors.[325] In contrast, one commenter opposed allowing crowdfunding issuers to use SPVs, stating that because the dollar value of typical crowdfunding transactions is small, there would not be enough money available to pay an SPV manager, or the fees paid would need to come immediately from the principal investment.[326] This commenter also stated that the SPV approach would make it difficult or impossible for crowdfunding investors to exercise their basic rights under state corporation laws, including voting for company directors, voting on material transactions, rights of access to corporate records, and appraisal rights.

After considering this feedback, we are proposing a new exclusion under the Investment Company Act for limited-purpose vehicles (''crowdfunding vehicles'') that function solely as conduits to invest in businesses raising capital through the vehicle under Regulation Crowdfunding. Proposed Rule 3a–9 under the Investment Company Act would exclude from the definition of ''investment company'' under that Act a crowdfunding vehicle that meets conditions designed to require that it function as a conduit for investors to invest in a business that seeks to raise capital through a crowdfunding vehicle.[327] As a result, SPVs meeting the definition of a crowdfunding vehicle would be able to utilize Regulation Crowdfunding.

Because the rule we are proposing would not be aimed at allowing investment companies or similar issuers to raise capital, but rather, solely at facilitating crowdfunding offerings by eligible issuers, we believe this approach would be consistent with the intent of Section 4(a)(6). Specifically, under the proposed rule, a crowdfunding vehicle would serve merely as a conduit for investors to invest in a single underlying issuer and would not have a separate business purpose. As discussed below, our proposed approach would allow investors in a crowdfunding vehicle to achieve the same economic exposure,

[319] *See* 2019 Small Business Capital Formation Advisory Committee Recommendation on Crowdfunding (recommending eligible investors be allowed to invest through special purpose vehicles).

[320] *See* 2017 Forum Report.

[321] *See* 2017 Treasury Report.

[322] *See id.* (noting that SPVs could potentially facilitate the type of syndicate investing model that has developed in accredited investor platforms, whereby a lead investor conducts due diligence, pools the capital of other investors, and receives carried interest compensation).

[323] *See* Iownit Letter; Rep. McHenry Letter; Wefunder Letter; AOIP Letter; MainVest Letter; and J. Schocken Letter.

[324] *See* AOIP Letter (noting that the use of an SPV can streamline communications with investors, allow for a single entry on the issuer's capitalization table, and allow for better management of investor rights to assure no excessive dilution takes place); Wefunder Letter; CCA Letter (''If the goal of some of these issuers is to be acquired, then having a shareholder table that is easy to manage would facilitate some of these acquisitions. An SPV would be beneficial and have no downside since investors still retain their voting rights.''); Rep. McHenry Letter; NYSBA Letter; and CrowdCheck Letter. *See also* supplemental letter from Wefunder, dated January 15, 2020 (suggesting the use of voting trusts as a type of SPV solution for Regulation Crowdfunding offerings).

[325] *See* CrowdCheck Letter. *See also* NASAA Letter (''crowdfunding funds could open the door to greater use of crowdfunding by issuers and investors. Those corresponding investor protections should require that any such funds be managed by a registered investment adviser, issue a single class of securities, be limited to investing in only a single crowdfunding offering, and maintain certain mandatory disclosure obligations.'').

[326] *See* letter from William F. Galvin, Secretary of the Commonwealth of Massachusetts, dated September 24, 2019 (''MA Secretary Letter'').

[327] *See* proposed Rule 3a–9(a). A crowdfunding vehicle complying with the proposed rule would not be an investment company as defined in the Investment Company Act or an entity that is excluded from the definition of investment company by section 3(b) or section 3(c) of that Act, and would therefore not be precluded from relying on Regulation Crowdfunding by Section 4A(f)(3) of the Securities Act. *See* Rule 100(b)(3) of Regulation Crowdfunding [17 CFR 227.100(b)(3)].

voting power, and ability to assert state and federal law rights, and receive the same disclosures under Regulation Crowdfunding, as if they had invested directly in the underlying issuer (''crowdfunding issuer'') in an offering made under Regulation Crowdfunding. This approach also would allow the crowdfunding issuer to maintain a simplified capitalization table and, by reducing the administrative complexities associated with a large and diffuse shareholder base,[328] may encourage crowdfunding issuers to offer voting rights, or other terms not currently offered as frequently to investors.

A crowdfunding issuer would be defined as a company [329] that seeks to raise capital as a co-issuer in an offering with a crowdfunding vehicle that complies with all of the requirements under Section 4(a)(6) of the Securities Act and Regulation Crowdfunding.[330] We propose to define a crowdfunding vehicle as an issuer [331] formed by or on behalf of a crowdfunding issuer for the purpose of conducting an offering under Section 4(a)(6) of the Securities Act as a co-issuer with the crowdfunding issuer, which offering is controlled by the crowdfunding issuer. Because the crowdfunding vehicle would only be a conduit for the crowdfunding issuer—and taking into account the significant limitations on the nature and scope of the crowdfunding vehicle's activities under the proposed rule—we believe that the crowdfunding vehicle would function as a means for the crowdfunding issuer to raise capital rather than an independent investment vehicle that would need to be subject to regulation under the Investment Company Act to protect its investors. Moreover, because the crowdfunding vehicle's business would consist only of the purchase of securities of the crowdfunding issuer, and would use the sale of its own securities to make such purchases, the crowdfunding issuer and the crowdfunding vehicle would be co-issuers under the Securities Act, meaning each would be deemed to be the maker of any statements by the crowdfunding vehicle and any material misstatements or omissions with respect to the offering.[332]

As co-issuers, the crowdfunding issuer and the crowdfunding vehicle would be required to jointly file a Form C, providing all of the required Form C disclosure with respect to (i) the offer and sale of the crowdfunding issuer's securities to the crowdfunding vehicle and (ii) the offer and sale of the crowdfunding vehicle's securities to investors.[333] For example, the Form C would be required to include the crowdfunding issuer's financial statements. By jointly filing a Form C describing both transactions and providing disclosure about both co-issuers, investors would be provided all information necessary to analyze both their direct investment in the crowdfunding vehicle and the terms of the crowdfunding vehicle's investment in the crowdfunding issuer.[334] This approach also would allow investors to review the entire business of the crowdfunding issuer and crowdfunding vehicle in one location (avoiding any confusion that could arise if the crowdfunding vehicle and crowdfunding issuer provided separate disclosure on the separate transactions, for example, on separate Forms C).

The conditions we are proposing for crowdfunding vehicles are intended to address any specific investor protection concerns raised by a vehicle that acts as a conduit for investments in a crowdfunding issuer. First, the proposed rule includes several conditions designed to require that the crowdfunding vehicle serve only as a conduit for investors to invest in the crowdfunding issuer. Specifically, the crowdfunding vehicle:

- Must be organized and operated for the sole purpose of acquiring, holding, and disposing of securities issued by a single crowdfunding issuer and raising capital in one or more offerings made in compliance with Regulation Crowdfunding; [335]
- Would not be permitted to borrow money and would be required to use the proceeds of the securities it sells solely to purchase a single class of securities of a single crowdfunding issuer; [336]
- Would be permitted to issue only one class of securities in one or more offerings under Regulation Crowdfunding in which the crowdfunding vehicle and the crowdfunding issuer are deemed to be co-issuers under the Securities Act; [337]
- Would be required to obtain a written undertaking from the crowdfunding issuer to fund or reimburse the expenses associated with the crowdfunding vehicle's formation, operation, or winding up, and the crowdfunding vehicle would not be permitted to receive other compensation.[338]

In addition, any compensation paid to any person operating the crowdfunding vehicle must be paid solely by the crowdfunding issuer.[339] These conditions collectively would require the crowdfunding vehicle to act as a conduit by limiting the scope of the activities in which the crowdfunding vehicle could engage and limiting the compensation it could receive.

These conditions also would prevent a crowdfunding vehicle from bearing any of the costs associated with its formation, operation, or winding up. We

[328] Shifting the administrative burden from the crowdfunding issuer to the crowdfunding vehicle would, for example, allow a third party (such as a funding portal) to more easily be engaged to handle the burden.

[329] Under the Investment Company Act, a company means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code or similar official or any liquidating agent for any of the foregoing, in his capacity as such. 15 U.S.C. 80–2(a)(8).

[330] As co-issuers, the crowdfunding issuer and crowdfunding vehicle would be jointly relying on Regulation Crowdfunding for the combined offering of the crowdfunding issuer's securities and the crowdfunding vehicle's securities.

[331] Under the Investment Company Act, an issuer means every person who issues or proposes to issue any security, or has outstanding any security which it has issued. 15 U.S.C. 80–2(a)(22).

[332] *See, e.g.,* 17 CFR 230.140.

[333] We are proposing to amend Rule 201 of Regulation Crowdfunding and Form C to require disclosure about the co-issuer in the offering statement. Because the crowdfunding vehicle is only acting as a conduit for the crowdfunding issuer, we do not believe that the individual investment limitations under Regulation Crowdfunding should apply to transfer of the securities from the crowdfunding issuer to the crowdfunding vehicle.

[334] *See* 17 CFR 227.201(m) (requiring a description of the ownership and capital structure of the issuer, including ''a summary of the differences between [the offered] securities and each other class of security of the issuer''). If a crowdfunding issuer also wanted to offer its own securities directly to investors pursuant to Regulation Crowdfunding, it would have to file a separate Form C with respect to that offering.

[335] *See* proposed Rule 3a–9(a)(1).

[336] *See* proposed Rule 3a–9(a)(2).

[337] *See* proposed Rule 3a–9(a)(3).

[338] *See* proposed Rule 3a–9(a)(4).

[339] *Id.* We preliminarily believe that a crowdfunding vehicle complying with the proposed rule would not be a broker as defined in Section 3(a)(4) of the Exchange Act or a dealer as defined in Section 3(a)(5) of the Exchange Act. If, however, a crowdfunding vehicle or a person operating the crowdfunding vehicle engages in activities beyond the limited scope described above, they may need to consider whether they would be required to register under Section 15(a) of the Exchange Act. *See, e.g., SEC* v. *Helms,* No. 13–cv–01036, 2015 WL 5010298, at *17 (W.D. Tex. Aug. 21, 2015) (''In determining whether a person 'effected transactions [within the meaning of Section 3(a)(4)],' courts consider several factors, such as whether the person: (1) Solicited investors to purchase securities, (2) was involved in negotiations between the issuer and the investor, and (3) received transaction-related compensation.'') (citing cases initiated by the Commission). In the context of a dealer, a key consideration in determining whether a person qualifies as a dealer has been the regularity with which it engages in securities transactions. *See, e.g., Eastside Church of Christ* v. *Nat'l Plan, Inc.*, 391 F.2d 357, 361–62 (5th Cir. 1968) (an entity that purchased many securities for its own account as part of its regular business and sold some of them was deemed a dealer).

believe it is appropriate for the crowdfunding issuer to bear these costs because the crowdfunding issuer and all of its investors would benefit from the ability to maintain a simplified capitalization table. In addition, if a crowdfunding vehicle could use offering proceeds or the assets held by the vehicle to cover its own expenses or the costs of any person operating the crowdfunding vehicle, this could result in investors obtaining different economic exposure if they were to invest through a crowdfunding vehicle rather than investing in the crowdfunding issuer directly.

Second, the proposed rule includes several conditions designed to provide investors in the crowdfunding vehicle with the same economic exposure, voting power, and Regulation Crowdfunding disclosures as if the investors had invested directly in the crowdfunding issuer.

The crowdfunding vehicle would be required to maintain the same fiscal year end as the crowdfunding issuer.[340] This condition is designed to align the Regulation Crowdfunding reporting requirements of the crowdfunding issuer and crowdfunding vehicle, and avoid any confusion that might arise if the two entities provided investors with disclosure covering different fiscal periods. The crowdfunding vehicle also would be required to maintain a one-to-one relationship between the number, denomination, type and rights of crowdfunding issuer securities it owns and the number, denomination, type and rights of its securities outstanding.[341] This condition is designed to provide an investor in the crowdfunding vehicle the same economic exposure as if he or she had invested directly in the crowdfunding issuer.

The crowdfunding vehicle similarly would be required to seek instructions from its investors with regard to two matters: (i) The voting of the crowdfunding issuer securities it holds; and (ii) participating in tender or exchange offers or similar transactions[342] conducted by the crowdfunding issuer.[343] The crowdfunding vehicle would be required to vote the crowdfunding issuer securities, and participate in tender or exchange offers or similar transactions, only in accordance with instructions from the investors in the crowdfunding vehicle.[344] This condition is designed to provide each investor in the crowdfunding vehicle the same voting power as if the investor had invested in the crowdfunding issuer directly. It also would allow investors to participate in certain important transactions related to the crowdfunding issuer securities should they arise.

The crowdfunding vehicle would receive all of the disclosures and other information required under Regulation Crowdfunding from the crowdfunding issuer and would then be required promptly to provide such disclosures and information to the investors and potential investors in the crowdfunding vehicle's securities and to the relevant intermediary.[345] Investors would therefore receive the same disclosures required under Regulation Crowdfunding about a crowdfunding issuer whether they invested in the issuer directly or through a crowdfunding vehicle.

Finally, we recognize that, absent a contrary condition in the proposed rule, there could be certain differences in an investor's rights under state and federal law when an investor invests in a crowdfunding vehicle as opposed to directly in a crowdfunding issuer. A direct investor as a shareholder of record, for example, could have rights of access to corporate records or appraisal rights under state law that might not be available to an investor that holds his or her investment indirectly through another entity.[346] We are therefore proposing to require a crowdfunding vehicle to provide to each investor the right to direct the crowdfunding vehicle to assert the rights under state and federal law that the investor would have if he or she had invested directly in the crowdfunding issuer.[347] We are also requiring that the crowdfunding vehicle provide to each investor any information that it receives from the crowdfunding issuer as a shareholder of record of the crowdfunding issuer.[348] These conditions are designed to provide shareholders the ability to assert the same rights under state and federal law regardless of whether they invest directly in a crowdfunding issuer or through a crowdfunding vehicle. These conditions would also require the crowdfunding vehicle to provide its investors with any information they would have received if they had invested directly in a crowdfunding issuer so that the investors would have the information that may be necessary to determine whether to direct the crowdfunding vehicle to assert any rights under state or federal law.

In addition to these conditions, we also considered proposing to require that a registered investment adviser manage the crowdfunding vehicle, as suggested by some commenters and the 2017 Treasury Report.[349] We are not proposing this requirement, however, because the proposed rule's conditions are designed to limit the crowdfunding vehicle's activities to that of acting solely as a conduit to hold the securities of the crowdfunding issuer without the ability for independent investment decisions to be made on behalf of the crowdfunding vehicle. We are also concerned that, given the relatively small amount of capital that can be raised through Regulation Crowdfunding, it would not be economically feasible to require a registered investment adviser in light of the fees and other expenses associated with such a requirement.

Request for Comment

66. Should we permit crowdfunding issuers to use crowdfunding vehicles as proposed? Would this approach encourage crowdfunding issuers to offer voting rights or other advantageous terms to investors?

67. Should we require registered investment advisers to manage crowdfunding vehicles? Would there be a role for a registered investment adviser in light of the limited activities in which a crowdfunding vehicle could engage? Would registered investment advisers find it practical to serve a role with respect to a crowdfunding vehicle? Should we require an exempt reporting adviser to manage crowdfunding vehicles? Should we allow investment advisers to form funds for non-accredited investors that invest in multiple crowdfunding issuers?

68. The proposed rule includes several conditions designed to require that the crowdfunding vehicle serve the sole purpose of acting as a conduit for investors to invest in the crowdfunding issuer. Are these conditions appropriate? Should a crowdfunding vehicle be permitted to engage in a broader range of activities? For example, should the rule provide that a crowdfunding vehicle must redeem or offer to repurchase its securities if there is a liquidity event at the crowdfunding issuer? If so, how should the rule accommodate these activities? Are there

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340 *See* proposed Rule 3a–9(a)(5).

341 *See* proposed Rule 3a–9(a)(6).

342 An example of a similar transaction would be the opportunity to sell alongside the crowdfunding issuer in an offer of the crowdfunding issuer securities.

343 *See* proposed Rule 3a–9(a)(7).

344 *See id.*

345 *See* proposed Rule 3a–9(a)(8). *See, e.g.,* Rule 201 of Regulation Crowdfunding [17 CFR 227.201].

346 *See, e.g.,* MA Secretary Letter.

347 *See* proposed Rule 3a–9(a)(9).

348 *Id.*

349 *See* Iownit Letter; NASAA Letter; CrowdCheck Letter; and 2017 Treasury Report.

other purposes for which the crowdfunding vehicle should be permitted to receive compensation or use offering proceeds? Should a crowdfunding issuer be required to pay the expenses associated with the formation, operation, or winding up of the crowdfunding vehicle? Should anyone else bear these costs? Should any compensation paid to any person operating the crowdfunding vehicle be paid solely by the crowdfunding issuer? Should we include any additional restrictions? Are there any other issues that could arise if we allow the use of crowdfunding vehicles in Regulation Crowdfunding offerings, as proposed? Would legislative changes be necessary or beneficial to permit crowdfunding vehicles to engage in a broader range of activities, pay compensation to any person operating the crowdfunding vehicle, or include any additional restrictions on the operations of the crowdfunding vehicle?

69. The proposed rule includes several conditions designed to provide investors in the crowdfunding vehicle the same economic exposure, voting power, and Regulation Crowdfunding disclosures as if the investors had invested directly in the crowdfunding issuers. Are these conditions appropriate? Should a crowdfunding vehicle be allowed to issue multiple classes of securities in the event that the crowdfunding issuer has multiple classes of securities? Would legislative changes be necessary or beneficial to permit a crowdfunding vehicle to issue multiple classes of securities? Should the crowdfunding vehicle and the crowdfunding issuer be deemed co-issuers for purposes of the Securities Act, including that Act's antifraud and liability provisions?

70. Would the proposed requirement that the crowdfunding vehicle maintain a one-to-one relationship between the number, denomination, type and rights of crowdfunding issuer securities it owns and the number, denomination, type and rights of crowdfunding vehicle securities outstanding provide an investor in the crowdfunding vehicle the same economic exposure as if he or she had invested directly in the crowdfunding issuer? Are there any changes we should make to achieve this objective more effectively or to address the manner in which a crowdfunding vehicle may hold crowdfunding issuer securities? For example, in the case of a stock-split by a crowdfunding issuer, should we permit a crowdfunding vehicle to maintain its current capitalization structure on the condition that it otherwise maintain the same economic exposure for its beneficial owners to the stock-split securities of the crowdfunding issuer?

71. The crowdfunding vehicle would be required to seek instructions from its investors with regard to two matters: (i) The voting of the crowdfunding issuer securities it holds; and (ii) participating in tender or exchange offers or similar transactions conducted by the crowdfunding issuer. The crowdfunding vehicle would be required to vote the crowdfunding issuer securities, and participate in tender or exchange offers or similar transactions, only in accordance with instructions from the investors in the crowdfunding vehicle. Would these requirements effectively pass-through any voting rights associated with securities issued by crowdfunding issuers and the ability to participate in tender or exchange offers or similar transactions? Should the rule refer to additional types of transactions? Would these requirements impact an issuer's willingness to use a crowdfunding vehicle, as the issuer would still indirectly be required to obtain consent or approval from numerous investors? Operationally, how would crowdfunding vehicles comply with this condition? Should the rule provide that a crowdfunding issuer may obtain proxies or investors' pre-approval with respect to certain (or all) matters? Should the rule provide more flexibility? For example, should the rule permit a crowdfunding vehicle to disclose to its investor at the time of its initial offering that the vehicle will cast all of its votes in accordance with the instructions of a majority of its security holders, rather than using pass-through voting as proposed? Would legislative changes be necessary or beneficial to provide the crowdfunding vehicles additional flexibility with respect to voting rights and the distribution of information?

72. Upon receiving all of the disclosures and other information required under Regulation Crowdfunding from the crowdfunding issuer, the crowdfunding vehicle would then be required promptly to provide such disclosures and information to the investors and potential investors in the crowdfunding vehicle's securities and to the relevant intermediary. Would these requirements address any concerns about investors and potential investors in a crowdfunding vehicle receiving regular information from the crowdfunding issuers?

73. The crowdfunding vehicle would be required to provide to each investor (i) the right to direct the crowdfunding vehicle to assert the rights under state and federal law that the investor would have if he or she had invested directly in the crowdfunding issuer and (ii) any information that it receives from the crowdfunding issuer as a shareholder of record of the crowdfunding issuer. Would this effectively preserve state and federal law rights for shareholders and provide shareholders with the necessary information to determine whether to direct the crowdfunding vehicle to assert such rights? Is this condition appropriate for crowdfunding vehicles which, unlike collective investment vehicles generally, would serve the specific and limited purpose of functioning solely as conduits to invest in businesses raising capital through the vehicle under Regulation Crowdfunding? Operationally, how would crowdfunding vehicles comply with this condition in practice? In lieu of this condition, would a crowdfunding vehicle's disclosure to investors in writing of any differences that its investors would experience by investing indirectly in the crowdfunding issuer through the crowdfunding vehicle sufficiently address any concerns about a crowdfunding vehicle affecting an investor's rights under state or federal law?

74. Should we, as proposed, require crowdfunding issuers and crowdfunding vehicles to jointly file a Form C? Alternatively, should we require that each file a separate Form C or only require the crowdfunding vehicle to file a Form C? What would be the advantages and disadvantages of requiring separate Forms C to be filed? Should the application of the Regulation Crowdfunding offering limit be revised in light of the requirement to jointly file a Form C?

75. The proposed rule would require a crowdfunding issuer that is offering securities through a crowdfunding vehicle to file a separate Form C if it wanted to also directly offer its securities to investors. Should we instead permit such a crowdfunding issuer to offer its securities directly to investors on the same Form C the crowdfunding vehicle uses to offer its securities? If so, are there any restrictions or disclosure obligations we should implement to avoid investor confusion? What issues could arise if crowdfunding issuers were allowed to simultaneously offer on Form C in this way?

76. A crowdfunding vehicle may constitute a single record holder for purposes of Section 12(g), rather than treating each of the crowdfunding vehicle's investors as record holders as would be the case if they had invested in the crowdfunding issuer directly. Is this treatment appropriate? Should each investor in the crowdfunding vehicle be

treated as a separate record holder for purposes of Section 12(g)? Would legislative changes be necessary or beneficial to address the treatment of the crowdfunding vehicle under Section 12(g)?

77. Should the Commission further address the status of a crowdfunding vehicle complying with the proposed rule for purposes of the definition of broker under Section 3(a)(4) of the Exchange Act or dealer under Section 3(a)(5) of the Exchange Act, and persons operating such crowdfunding vehicle?

2. Regulation Crowdfunding Eligible Securities

We are proposing to limit the types of securities that may be offered and sold in reliance on Regulation Crowdfunding. Unlike Regulation A, which limits the types of securities eligible for sale to equity securities, debt securities, and securities convertible or exchangeable to equity interests, including any guarantees of such securities,[350] Regulation Crowdfunding does not restrict the type of security that may be offered and sold in reliance on the exemption. As a result, issuers using Regulation Crowdfunding have offered and sold a number of non-traditional securities.[351] One type of non-traditional security that has caused concern is the ''Simple Agreement for Future Equity,'' or SAFE.[352] The offer and sale of these kinds of securities to retail investors in an exempt offering could result in harm to investors who may face challenges in analyzing and valuing such securities, or who may be confused by the descriptions of such securities on the funding portals. These kinds of securities may also create confusion for retail investors who may not understand the differences between these securities and traditional common stock. Such confusion could lead to investor dissatisfaction, which in turn may jeopardize the reputation of the Regulation Crowdfunding market.

As a result, we are proposing to amend Regulation Crowdfunding to harmonize the rule with Regulation A and limit the types of securities that may be offered under the exemption to correspond with the eligible securities provision of Regulation A. Thus, the types of securities eligible for sale in an offering under Regulation Crowdfunding would be limited to equity securities, debt securities, and securities convertible or exchangeable to equity interests, including any guarantees of such securities.[353] We preliminarily believe that such a limitation is consistent with the nature of the crowdfunding exemption. We understand that the popularity of SAFEs and similar security types in Regulation Crowdfunding offerings may be in part due to a desire by issuers to avoid a complicated capitalization table. However, we believe that the proposed amendment permitting crowdfunding vehicles to use Regulation Crowdfunding discussed above may more appropriately alleviate that concern.

Request for Comment

78. Should we harmonize the limitations on the types of eligible securities issuable under Regulation Crowdfunding with Regulation A as proposed? If so, what would be the effect on issuers, investors, and the market of limiting these categories of securities? In the alternative, should we modify Regulation Crowdfunding only to exclude particular security types, such as SAFEs?

79. If the popularity of SAFEs is in part due to a desire by issuers to avoid a complicated capitalization table, would our proposed amendments permitting crowdfunding vehicles to use Regulation Crowdfunding appropriately alleviate that concern? Are there other reasons why issuers issue SAFEs or other security types in Regulation Crowdfunding offerings that we should be aware of when considering whether to exclude particular security types?

3. Regulation A Eligibility Restrictions for Delinquent Exchange Act Filers

Regulation A includes an eligibility requirement that an issuer conducting a Regulation A offering must have filed with the Commission all reports required to be filed, if any, pursuant to Rule 257 during the two years before the filing of the offering statement (or for such shorter period that the issuer was required to file such reports).[354] Now that issuers that are subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act are permitted to conduct Regulation A offerings, we are proposing to amend Regulation A to include a similar eligibility requirement covering Exchange Act reports. As proposed, companies that do not file all the reports required to have been filed by Sections 13 or 15(d) of the Exchange Act in the two-year period preceding the filing of an offering statement would be ineligible to conduct a Regulation A offering.[355]

Because Exchange Act registrants are not required to file reports pursuant to Rule 257, the existing eligibility provision does not expressly require those registrants to have filed their Exchange Act reports in order to rely on Regulation A. The proposed change would hold Exchange Act reporting companies to the same standard as repeat Regulation A issuers. This requirement would benefit investors by ensuring that they have access to historical financial and non-financial statement disclosure about Exchange Act reporting companies that are conducting Regulation A offerings and may facilitate the development of an efficient secondary market for the securities they purchase in Regulation A offerings. Furthermore, because they are already required to file such reports, the proposed requirement would not increase the burden of making a Regulation A offering for Exchange Act reporting companies or companies that were Exchange Act reporting companies within the two years prior to making a Regulation A offering.

Request for Comment

80. Should we amend Regulation A as proposed to include an eligibility requirement that requires Exchange Act reporting companies to be current in their Exchange Act reporting for the two years before filing an offering statement?

[350] *See* 17 CFR 230.261.

[351] Other types of non-traditional securities that have been offered and sold under Regulation Crowdfunding include Simple Agreements for Future Tokens and certain revenue sharing agreements. *See infra* Section IV.C.6.b for further information about security types in Regulation Crowdfunding.

[352] *See* SEC Office of Investor Education and Advocacy, Investor Bulletin: Be Cautious of SAFEs in Crowdfunding (May 9, 2017), *available at https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_safes.* A SAFE is an agreement to provide investors with a future equity stake in the issuer if certain triggering events occur. SAFEs are not an equity interest or common stock of an issuer. Rather, they are convertible into such equity only upon the occurrence of a triggering event specifically enumerated in the agreement, such as when the issuer is acquired, merges with another company, or conducts an initial public offering. As such, SAFEs are specifically controlled by the terms of the agreement between the issuer and the investors and unlike common stock do not confer all of the rights and entitlements provided under state corporation law, such as voting rights or appraisal rights. *See also* FINRA, ''Be Safe—5 Things You Need to Know About SAFE Securities and Crowdfunding,'' *available at https://www.finra.org/investors/insights/safe-securities.*

[353] Certain securities that may not have all of the characteristics traditionally associated with equity or debt securities, such as tokens, may qualify as Regulation A eligible securities, depending on the particular facts and circumstances. If adopted, we believe the proposed amendment to eligible securities under Regulation Crowdfunding would be applied in the same manner.

[354] 17 CFR 230.251(b)(7). Rule 257 requires issuers conducting Tier 2 offerings to comply with certain ongoing and periodic reporting requirements.

[355] If an issuer is delayed in filing a report, it would need to become current in its reports over the last two years in order to become eligible again.

G. Bad Actor Disqualification Provisions

The Commission's exempt offering framework includes rules disqualifying certain covered persons, including felons and other ''bad actors'' from relying on Regulation A, Regulation Crowdfunding, and Regulation D to offer and sell securities. While the disqualification provisions are substantially similar,[356] the look-back period for determining whether a covered person is disqualified differs between Regulation D and the other exemptions. We are proposing to harmonize the bad actor disqualification provisions in Rule 506(d) of Regulation D, Rule 262(a) of Regulation A and Rule 503(a) of Regulation Crowdfunding by adjusting the look-back requirements in Regulation A and Regulation Crowdfunding to include the time of sale in addition to the time of filing.

Under Regulation D[357] a disqualification occurs if: (1) A covered person is involved in the offering; (2) that covered person is subject to one or more of the disqualifying events in Rule 506(d); and (3) the disqualifying event occurs within the look-back period provided by the regulation.[358] For Regulation D, the look-back period is measured from the time of the sale of securities in the relevant offering. For Rule 262(a) of Regulation A and Rule 503(a) of Regulation Crowdfunding, the look-back period is measured from the time the issuer files an offering statement.[359]

We believe that it is important to look to both the time of filing of the offering document and the time of the sale with respect to disqualifying bad actors from participating in an offering.[360] Otherwise, there is an increased likelihood that investors may unknowingly participate in securities offerings involving offering participants who have engaged in fraudulent activities or violated securities or other laws or regulations. We note, for example, that in the context of a continuous or delayed offering under Regulation A where the look-back is generally measured from the time of filing of the offering statement, a covered person under Rule 262 could potentially offer and sell securities under Regulation A after the filing of the offering statement and until the issuer is required to file a post-qualification amendment to the offering statement, despite the occurrence of an event during that time frame that otherwise would constitute a disqualifying event if it occurred prior to the filing of the offering statement.

Under Regulation A, if a covered person triggers one of the disqualifying events in Rule 262, the Commission may suspend reliance on the Regulation A exemption through Rule 258, which requires a notice and hearing opportunity for the issuer prior to the suspension becoming permanent. Furthermore, if a covered person triggers one of the disqualifying events, the issuer may need to consider whether it must suspend the offering until it files a post-qualification amendment to reflect a fundamental change in the information set forth in the most recent offering statement or post-qualification amendment.[361] Regulation Crowdfunding, which similarly measures the look-back from the time of filing of the offering statement, does not have a suspension provision, similar to Regulation A, but similarly requires an issuer to amend the offering statement to disclose material changes, additions, or updates to information that it provides to investors for offerings that have not been completed or terminated.[362] Nevertheless, in certain circumstances, periods of time may exist during Regulation A and Regulation Crowdfunding offerings between the filing of the offering statement and the next required filing where an offering could continue despite an event that would have constituted a disqualifying event at the time of filing.

The disqualification provisions in Regulation A and Regulation Crowdfunding were intended to be ''substantially similar'' to those in Regulation D.[363] We believe that further harmonizing these provisions by using the same disqualification look-back period would simplify compliance and due diligence for issuers and would improve investor protections by further limiting the role of ''bad actors'' in exempt offerings.[364] Specifically, we propose to add ''or such sale'' to any look-back references that refer to the time of filing, such as the ''filing of the offerings statement,'' ''such filing,'' or ''the filing of the information required by Section 4A(b) of the Securities Act'' in Rule 262(a) and Rule 503(a).

Additionally, in order to reflect the offering statement filing requirement before the first Regulation Crowdfunding sale, and more closely track the requirement in Rule 262(a) of Regulation A, we propose including ''any promoter connected with the issuer in any capacity at the time *of filing, any offer after filing, or such sale*'' in Rule 503(a). Rule 503(a) currently only covers promoters connected with the issuer in any capacity ''at the time of such sale,'' making it possible that a promoter that previously engaged in fraudulent activities or violated securities or other laws or regulations, could be involved in offering activities under Regulation Crowdfunding so long as such promoter is not connected with the issuer in any capacity at the time of sale.

In adopting the disqualification provisions under Regulation D, the Commission was cognizant of the monitoring costs associated with Rule 506(d)'s disqualification provisions in an ongoing offering. The Commission therefore adopted an exception from disqualification for offerings where the issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed. The Commission was particularly aware of the costs of monitoring beneficial owners of 20 percent or more of the issuer's outstanding voting securities.[365]

[356] Section 3(b)(2)(G)(ii) of the Securities Act [15 U.S.C. 77c(b)(2)(G)(ii)] provides the Commission with authority to issue bad actor disqualification rules under Regulation A that are ''substantially similar'' to those adopted for securities offerings under Rule 506 of Regulation D pursuant to Section 926 of the Dodd-Frank Act. *See* 2015 Regulation A Release; Disqualification of Felons, Other ''Bad Actors'' from Rule 506 Offerings, Release No. 33–9414 (July 10, 2013) [78 FR 44729 (July 24, 2013)] (''Rule 506(d) Final Release''); and Crowdfunding Adopting Release.

[357] The disqualification provisions in Rule 506(d) also apply to Rule 504. *See* 17 CFR 230.504(b)(3).

[358] *See* 17 CFR 230.506(d)(1)(i) through (viii).

[359] Rule 503(a) provides look-back language based on ''the filing of the offering statement'' or ''the filing of the information required by section 4A(b) of the Securities Act'' on Form C. *See* 17 CFR 227.503. While the disqualification events in Securities Act Rule 262 and Regulation Crowdfunding Rule 503 are generally tied to the filing of an offering statement, Rule 262(a)(6) and Rule 503(a)(6) are not. *See* 17 CFR 230.262(a)(6); and 17 CFR 227.503(a)(6).

[360] This may be particularly true for regulating the conduct of promoters connected with an issuer throughout an ongoing offering.

[361] *See* Rule 252(f)(2).

[362] *See* Rule 203(a)(2).

[363] *See* 2015 Regulation A Release; and Crowdfunding Adopting Release. Section 302(d) of the JOBS Act requires the Commission to establish disqualification provisions under which an issuer would not be eligible to offer securities pursuant to Section 4(a)(6) and an intermediary would not be eligible to effect or participate in transactions pursuant to Section 4(a)(6). Section 302(d)(2) specifies that the disqualification provisions must be ''substantially similar'' to the ''bad actor'' disqualification provisions contained in Rule 262 of Regulation A. As noted above, the disqualification provisions under Regulation A are required to be ''substantially similar'' to those adopted for securities offerings under Rule 506. *See supra* note 356.

[364] *See* 2015 Regulation A Release, at Section II.G. In adopting the 2015 Regulation A amendments, the Commission stated that a uniform set of bad actor triggering events would simplify due diligence, particularly for issuers that may engage in different types of exempt offerings.

[365] Rule 506(d) Final Release, at Section II.B.

At the time, the Commission clarified that, for ongoing offerings, the issuer's reasonable care duty to monitor covered persons generally ''includes updating the factual inquiry'' on a periodic basis.[366] For Regulation A and Regulation Crowdfunding, however, monitoring covered beneficial owners may pose different challenges than for Regulation D offerings because shares sold under Regulation A are potentially freely tradable immediately following an investor's initial purchase, and shares sold under Regulation Crowdfunding are generally freely tradable after a holding period. In recognition of the additional monitoring burdens associated with Regulation A and Regulation Crowdfunding offerings, we are proposing to retain the current look-back period applicable to covered beneficial owners in Regulation A and Regulation Crowdfunding rather than amending it to start at the time of sale. We are not aware of any investor protection concerns that have arisen with respect to the current look-back period for beneficial owners.

These proposed amendments would not alter the availability of the existing reasonable care exception, an issuer's ability to seek a waiver from disqualification from the Commission, or the exception applicable when a court or regulatory authority advises in writing that disqualification should not arise.[367] Nonetheless, with respect to the latter provision, we propose to amend Rule 262(b)(3) and Rule 503(b)(3), which currently provide that a court's or regulatory authority's advice with respect to the disqualifying effect of an order, judgment or decree may occur after the time of ''the filing of the offering statement,'' in the case of Regulation A, or ''the filing of the information required by section 4A(b) of the Securities Act,'' in the case of Regulation Crowdfunding. The proposed added language would accord with the parallel look-back language in Rule 506(d)(2)(iii) of Regulation D by replacing the references in Rules 262(b)(3) and 503(b)(3) with ''before the relevant sale.''

Request for Comment

81. Should we revise the bad actor look-back provisions in Rule 262(a) of Regulation A and Rule 503(a) of Regulation Crowdfunding as proposed?

82. Should we keep any of the current bad actor look-back provisions centered on the time of filing rather than the time of sale as we are proposing to do for 20 percent beneficial owners? Should we do the same for any covered persons other than 20 percent beneficial owners?

83. Instead of disqualifying Regulation A or Regulation Crowdfunding issuers affected by disqualifying events that first arise or occur during an ongoing offering, should we allow such issuers to continue the offering but require them to disclose the disqualifying event, and provide investors with the option to cancel their investment commitments and obtain a refund of invested funds? Would such an option be difficult for issuers to administer?

84. Should we, as proposed, revise the language in Rule 503(a) to more closely track the requirement in Rule 262(a) of Regulation A by including ''any promoter connected with the issuer in any capacity at the time of filing, any offer after filing, or such sale''?

85. Are there any anticipated additional costs of verifying the bad actor status of covered persons under Rule 262(a) and Rule 503(a) with a look-back period based on the time of sale instead of the time of filing? If so, would those costs be significant to the average issuer in Regulation A and Regulation Crowdfunding offerings?

III. General Request for Comment

We request and encourage any interested person to submit comments regarding the proposed rules and amendments that are the subject of this release, potential additions or changes to these proposals, and other matters that may have an effect on the proposals. With regard to any comments, we note that such comments are of particular assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Economic Analysis

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 2(b) of the Securities Act,[368] Section 3(f) of the Exchange Act,[369] and Section 2(c) of the Investment Company Act[370] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in (or, with respect to the Investment Company Act, consistent with) the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act requires the Commission to consider the effects on competition of any rules the Commission adopts under the Exchange Act and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[371]

We have considered the economic effects of the proposed amendments, including their effects on competition, efficiency, and capital formation. Many of the effects discussed below cannot be quantified. Consequently, while we have, wherever possible, attempted to quantify the economic effects expected from this proposal, much of the discussion remains qualitative in nature. 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.

We request comment from the points of view of all interested parties. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

A. Broad Economic Considerations

The proposed amendments would simplify, harmonize, and improve certain aspects of the Commission's exempt offering framework, including Regulation D, Regulation A, Regulation Crowdfunding, and other related rules. The proposed amendments build on changes to the federal securities laws brought about by the JOBS Act, as well as many other developments in the securities laws, capital markets, and communication technologies since the adoption of Regulation D in 1982. By providing a more streamlined and consistent exempt offering framework, the proposed amendments are expected to promote capital formation through exempt offerings (either by existing issuers or by issuers that would not have otherwise pursued a securities offering), expanding such issuers' ability to pursue positive net present value investment and growth opportunities. The proposed amendments may also address current uncertainties in the ability to use exempt offerings prior to, or concurrent with, registered offerings, which could ease the path for some issuers to a registered offering. In

[366] *Id.* at Section II.D.2.

[367] 17 CFR 230.262(b)(3).

[368] 15 U.S.C. 77b(b).

[369] 15 U.S.C. 78c(f).

[370] 15 U.S.C. 80a–2(c).

[371] 15 U.S.C. 78w(a)(2).

addition, the increased flexibility afforded by the proposed amendments could enable issuers to optimize their offering strategy and reduce their external financing costs, enabling such issuers to fund a broader range of investment projects. We recognize, however, that the proposed amendments might lead to some substitution between different exempt offering methods or between registered offerings and exempt offerings, which would moderate the aggregate effects of the amendments on new capital formation.

Amendments to certain provisions of Regulation A, Regulation Crowdfunding, and Rule 504 intended to facilitate compliance and raise offering limits are expected to make these exemptions more cost-effective and attractive to a broader range of issuers than they are today. The resulting composition of the issuers that would rely on these exemptions remains unclear. One possibility is that the amended exemptions would draw a larger and more diversified set of issuers, including issuers with high-growth potential and associated high financing needs that might otherwise forgo these exemptions in light of the existing, lower limits. The higher offering limits also might make the amended exemptions more attractive to financial intermediaries that presently might be unwilling to partake in such offerings because fixed costs of participating in such a fund raising, such as the costs of due diligence, might be too high in proportion to the potential compensation, and because the pool of issuers seeking financing in these market segments today might not be sufficiently large or diversified to attract intermediaries. Another possibility is that the proposed amendments could make these exemptions more attractive to issuers seeking to avoid more stringent requirements that would apply to other offering structures. We lack the data, or a methodological approach, to disentangle these competing effects. Importantly, even if adverse selection increased somewhat in some segments of the exempt market under the proposed amendments, the investor protections applicable to each exemption would remain as significant safeguards against the risk of losses for less sophisticated investors.

Some of the proposed amendments could expand non-accredited investor access to investment opportunities, including:

- Proposed changes to increase investment limits for non-accredited investors in Regulation Crowdfunding offerings;
- Provisions expanding integration safe harbors for Rule 506 offerings, potentially enabling more frequent offerings involving non-accredited investors; and
- Provisions that potentially make Rule 504, Regulation A, and Regulation Crowdfunding, which do not limit the number of non-accredited investors, more attractive to prospective issuers through increased offering limits, the eligibility of crowdfunding vehicles under Regulation Crowdfunding, and modifications to certain Regulation A disclosure requirements.

Expanded access to exempt securities could enable non-accredited investors to allocate capital across a broader range of opportunities.[372] Several factors make it difficult to assess the net effects of the proposed amendments would have on the participation in exempt offerings

[372] As noted by several commenters, comprehensive data on the investment returns resulting from investments in exempt offerings is scarce due to the scaled disclosure requirements and a lack of a secondary trading market. *See* State Attorneys General Letter; letter from Philip A. Feigin dated August 21, 2019; letter from Elizabeth D. de Fontenay et al. dated September 24, 2019; letter from Rick A. Fleming, Investor Advocate of the Commission, dated July 11, 2019; and letter from Better Markets, Inc. dated September 24, 2019 (''Better Markets Letter''). Available evidence focuses on returns of hedge funds and private equity funds. Comprehensive, market-wide data on the returns of private investments is not available due to a lack of required disclosure, the voluntary nature of disclosure of performance information by private funds, and the very limited nature of secondary trading in these securities. Academic studies have focused on private fund returns, acknowledging limitations and biases in the available data. As an important caveat, risk-adjusted returns obtained by large institutional investors in private placements may not be an accurate representation of the returns that would be obtained by non-accredited investors. Research has examined (i) private equity returns (*see, e.g.,* Steven N. Kaplan & Antoinette Schoar, *Private Equity Performance: Returns, Persistence, and Capital Flows,* 60 J. Fin. 1791 (2005); Andrew Metrick & Ayako Yasuda, *Venture Capital and Other Private Equity: A Survey,* 17 Eur. Fin. Mgmt. 619 (2011); Christian Diller & Christoph Kaserer, *What Drives Private Equity Returns? Fund Inflows, Skilled GPs, and/or Risk?,* 15 Eur. Fin. Mgmt. 643 (2009); Robert S. Harris et al., *Financial Intermediation in Private Equity: How Well Do Funds of Funds Perform?,* 129 J. Fin. Econ. 287 (2018); Robert S. Harris, Tim Jenkinson, & Steven N. Kaplan, *Private Equity Performance: What Do We Know?,* 69 J. Fin. 1851 (2014); and Kasper Nielsen, *The Return to Direct Investment in Private Firms: New Evidence on the Private Equity Premium Puzzle,* 17 Eur. Fin. Mgmt. 436 (2011)); (ii) VC performance (*see, e.g.,* John H. Cochrane, *The Risk and Return of Venture Capital,* 75 J. Fin. Econ. 3 (2005); Arthur Korteweg & Stefan Nagel, *Risk-Adjusting the Returns to Venture Capital,* 71 J. Fin. 1437 (2016); and Axel Buchner, Abdulkadir Mohamed, & Armin Schwienbacher, *Does Risk Explain Persistence in Private Equity Performance?,* 39 J. Corp. Fin. 18 (2016)); and (iii) hedge fund returns (*see, e.g.,* William Fung & David A. Hsieh, *Hedge Fund Benchmarks: A Risk-Based Approach,* Fin. Analysts J., Sept./Oct. 2004, at 65; William Fung & David A. Hsieh, *Measurement Biases in Hedge Fund Performance Data: An Update,* Fin. Analysts J., May/June 2009, at 36; Manuel Ammann, Otto R. Huber, & Markus Schmid, *Benchmarking Hedge Funds: The Choice of the Factor Model* (Working Paper, 2011); Zheng Sun, Ashley W. Wang, & Lu Zheng, *Only Winners in Tough Times Repeat: Hedge Fund Performance Persistence over Different Market Conditions,* 53 J. Fin. & Quantitative Analysis 2199 (2018); Charles Cao et al., *What Is the Nature of Hedge Fund Manager Skills? Evidence from the Risk-Arbitrage Strategy,* 51 J. Fin. & Quantitative Analysis 929 (2016); Vikas Agarwal, T. Clifton Green, & Honglin Ren, *Alpha or Beta in the Eye of the Beholder: What Drives Hedge Fund Flows?,* 127 J. Fin. Econ. 417 (2018); Jakub Jurek and Erik Stafford, *The Cost of Capital for Alternative Investments,* 70 J. Fin. 2185 (2015); Turan G. Bali, Stephen J. Brown, & Mustafa O. Caglayan, *Systematic Risk and the Cross Section of Hedge Fund Returns,* 106 J. Fin. Econ. 114 (2012); Turan G. Bali, Stephen J. Brown, & Mustafa O. Caglayan, *Macroeconomic Risk and Hedge Fund Returns,* 114 J. Fin. Econ. 1 (2014); Andrea Buraschi, Robert Kosowski, & Fabio Trojani, *When There Is No Place to Hide: Correlation Risk and the Cross-Section of Hedge Fund Returns,* 27 Rev. Fin. Stud. 581 (2014); Ravi Jagannathan, Alexey Malakhov, & Dmitry Novikov, *Do Hot Hands Exist Among Hedge Fund Managers? An Empirical Evaluation,* 65 J. Fin. 217 (2010); Andrea Buraschi, Robert Kosowski, & Worrawat Sritrakul, *Incentives and Endogenous Risk Taking: A Structural View on Hedge Fund Alphas,* 69 J. Fin. 2819 (2014); Ronnie Sadka, *Liquidity Risk and the Cross-Section of Hedge-Fund Returns,* 98 J. Fin. Econ. 54 (2010); and Ilia D. Dichev & Gwen Yu, *Higher Risk, Lower Returns: What Hedge Fund Investors Really Earn,* 100 J. Fin. Econ. 248 (2011)).

Comprehensive data on angel investment returns, entrepreneur returns on investment of their own funds and savings in starting a private business, and returns of investors in the crowdfunding market is lacking. A few studies we have identified have used small, selected samples, sometimes from foreign markets, which do not generalize to the entire U.S. market. *See, e.g.,* Vincenzo Capizzi, *The Returns of Business Angel Investments and Their Major Determinants,* 17 Venture Cap. 271 (2015) (using a small sample of Italian data); and Colin M. Mason & Richard T. Harrison, *Is It Worth It? The Rates of Return from Informal Venture Capital Investments,* 17 J. Bus. Venturing 211 (2002) (using a small UK sample). Investments through AngelList and similar platforms allow accredited investors to make VC-like investments in startups. The returns generated by such investments have been a topic of debate in the literature. *See, e.g.,* Olga Itenberg & Erin E. Smith, *Syndicated Equity Crowdfunding: The Trade-Off Between Deal Access and Conflicts of Interest* (Simon Bus. Sch., Working Paper No. FR 17–06, Mar. 2017). *See also, e.g.,* Elisabeth Mueller, *Returns to Private Equity—Idiosyncratic Risk Does Matter!,* 15 Rev. Fin. 545 (2011); Thomas Astebro, *The Returns to Entrepreneurship,* in Oxford Handbook of Entrepreneurial Finance (Douglas Cumming ed. 2012); and Thomas J. Moskowitz & Annette Vissing-Jørgensen, *The Returns to Entrepreneurial Investment: A Private Equity Premium Puzzle?,* 92 Am. Econ. Rev. 745 (2002) (''Moskowitz and Vissing-Jørgensen''). For instance, Moskowitz and Vissing-Jørgensen examine the returns to investing in U.S. nonpublicly traded equity and find that, although entrepreneurial investment is extremely concentrated, the returns to private equity are no higher than the returns to public equity. They attribute the willingness of households to invest substantial amounts in a single privately held firm with a seemingly far worse risk-return trade-off to large nonpecuniary benefits, a preference for skewness, or overestimated probability of survival.

and efficiency of capital allocation by non-accredited investors:

• The amendments might lead to substitution between exempt offering methods that allow non-accredited investors or between registered offerings and exempt offerings, leaving the aggregate set of investment opportunities for non-accredited investors little changed. For instance, some commenters expressed concern that facilitating capital raising through exempt offerings might incrementally contribute to the ongoing decline in U.S. registered offerings, which might limit the overall set of investment opportunities available to non-accredited investors and decrease the aggregate amount of information available to investors.[373] Even if that were the case, expanded access to capital allowing issuers to meet their financing needs at a lower cost would enhance the efficiency of capital allocation to growth opportunities, with the resulting benefits for economic growth, competition, and capital markets as a whole. Importantly, we do not expect the proposed amendments to deter a significant proportion of the issuers that are large and mature enough to be on the cusp of going public from pursuing a public offering. Such issuers likely already have a developed network of angel investors and/or backing from venture capitalists on which they can rely to raise the necessary amount of financing today. Thus, such issuers' decision to go public is likely driven more by the benefits of being a public reporting company (relative to the cost of being public). Rather, we believe that the amendments might have the most significant effects on smaller growth issuers that presently lack sufficient access to financing that they require to develop their business model and gain scale. Such issuers may face significant financing constraints and lack an established network of angel investors or venture capital backing and may be too early in their lifecycle to be a candidate for a public offering. Thus, if the added flexibility contained in the amendments allows some of these small issuers to raise enough external financing to develop their business model and scale up to a point where they may become viable candidates for a public offering, the amendments might diversify the pool of prospective issuers that are able to conduct a registered offering, which could result in a higher number of IPOs in the future.

• Issuers might remain unwilling to undertake exempt offerings with non-accredited investors (*e.g.,* due to a preference for institutional and angel investors that bring connections and expertise in addition to capital; capitalization table concerns in light of subsequent financing plans[374] or Section 12(g) registration thresholds; costs of investor relations with small investors; or risks of proprietary information disclosure due to the presence of multiple small investors; or general solicitation). Issuers with worse prospects that are unable to attract capital from large investors, which undertake more monitoring and screening, might be overrepresented among exempt offerings focused on non-accredited investors. This mechanism might contribute to quality sorting in an expanded set of investment opportunities in exempt offerings to non-accredited investors.

• Non-accredited investors might choose not to participate in exempt offerings (*e.g.,* due to illiquidity, high transaction costs, search costs, high information asymmetries and due diligence costs, high investment minimums that preclude the desired level of diversification for small investors, agency problems due to minority stakes, etc.).

• The resulting efficiency of portfolio allocations of non-accredited investors also would depend on the level of investor sophistication in obtaining and analyzing information in a setting where issuers provide less disclosure compared to registered offerings.[375]

We note that the level of investor sophistication and due diligence capabilities might improve with investing experience, which investors might not have been able to develop under the baseline, although evidence is mixed on the effectiveness of learning among individual investors. *See, e.g.,* Lubos Pastor & Pietro Veronesi, *Learning in Financial Markets,* 1 Ann. Rev. Fin. Econ. 361 (2009) (surveying literature on learning); Maximilian Koestner et al., *Do Individual Investors Learn from Their Mistakes?,* 87 J. Bus. Econ. 669 (2017); Amit Seru, Tyler Shumway, & Noah Stoffman, *Learning by Trading,* 23 Rev. Fin. Stud. 705 (2010) (finding ''evidence of two types of learning: some investors become better at trading with experience, while others stop trading after realizing that their ability is poor. A substantial part of overall learning by trading is explained by the second type'' and noting that ''ignoring investor attrition, the existing literature significantly overestimates how quickly investors become better at trading.''); Stefan Muhl & Tõnn Talpsepp, *Faster Learning in Troubled Times: How Market Conditions Affect the Disposition Effect,* 68 Q. Rev. Econ. & Fin. 226 (2018) (using Estonian data and finding that learning, particularly learning by doing,

Continued

[373] *See, e.g.,* Better Markets Letter (opining that ''if the Commission enacts some of the ideas it is contemplating in this Concept Release, the US investors will have fewer public companies to invest in, the securities markets will have more companies with illiquid securities, and price discovery will suffer.'') and Healthy Markets Letter (opining that ''the available evidence suggests that instead of promoting efficient allocations of capital and protecting investors, the proposals outlined by the Concept Release will increase the number of companies and amount of capital in the private markets on one hand, while further eroding the number and quality of public companies on the other.'').

[374] *See, e.g., supra* Section II.F.

[375] In Modern Portfolio Theory, constraining the set of investment opportunities yields a potentially inferior optimal portfolio. *See, e.g.,* Zvi Bodie, Alex Kane, & Alan J. Marcus, Investments (10th ed. 2013) (''Bodie et al. 2013''). However, the presence of information frictions due to a lack of investor sophistication might reverse this general prediction and result in lower portfolio risk-adjusted returns. *See, generally,* surveys in Nicholas Barberis & Richard Thaler, *A Survey of Behavioral Finance,* in Handbook of the Economics of Finance (Vol. 1B) (George M. Constantinides, Milton Harris, & Rene M. Stulz eds., 1st ed. 2003), at 1053; and Brad Barber & Terrance Odean, *The Behavior of Individual Investors,* in Handbook of the Economics of Finance (Vol. 2B) (George M. Constantinides, Milton Harris, & Rene M. Stulz eds., 1st ed. 2013), at 1533. *See also, e.g.,* William N. Goetzmann & Alok Kumar, *Equity Portfolio Diversification,* 12 Rev. Fin. 433 (2008) (finding that ''U.S. individual investors hold under-diversified portfolios, where the level of under-diversification is greater among younger, low-income, less-educated, and less-sophisticated investors. The level of under-diversification is also correlated with investment choices that are consistent with over-confidence, trend-following behavior, and local bias. . .Under-diversification is costly to most investors, but a small subset of investors under-diversify because of superior information.''); Shlomo Benartzi & Richard H. Thaler, *Heuristics and Biases in Retirement Savings Behavior,* J. Econ. Persp., Summer 2007, at 81; Warren Bailey, Alok Kumar, & David Ng, *Behavioral Biases of Mutual Fund Investors,* 102 J. Fin. Econ. 1 (2011) (examining ''the effect of behavioral biases on the mutual fund choices of a large sample of US discount brokerage investors using new measures of attention to news, tax awareness, and fund-level familiarity bias, in addition to behavioral and demographic characteristics of earlier studies. Behaviorally biased investors typically make poor decisions about fund style and expenses, trading frequency, and timing, resulting in poor performance. Furthermore, trend chasing appears related to behavioral biases, rather than to rationally inferring managerial skill from past performance. Factor analysis suggests that biased investors often conform to stereotypes that can be characterized as Gambler, Smart, Overconfident, Narrow Framer, and Mature.''); Anders Anderson, *Trading and Under-Diversification,* 17 Rev. Fin. 1699 (2013) (documenting ''a link between trading and diversification by using detailed trading records from a Swedish discount broker matched with individual tax records. Diversification is measured by the investors' stake size, defined as the fraction of their risky financial wealth invested in individual stocks through the broker under study. High-stake investors have concentrated portfolios, trade more, and achieve lower trading performance. They share several features with those who trade excessively, namely lower income, wealth, age, and education, suggesting that they lack investment expertise. The results directly imply that trading losses in the cross-section are mainly borne by those who can least afford them.''); and Hans-Martin von Gaudecker, *How Does Household Portfolio Diversification Vary with Financial Literacy and Financial Advice?,* 70 J. Fin. 489 (2015) (finding that ''[n]early all households that score high on financial literacy or rely on professionals or private contacts for advice achieve reasonable investment outcomes. Compared to these groups, households with below-median financial literacy that trust their own decision-making capabilities lose an expected 50 bps on average. All group differences stem from the top of the loss distribution.'').

• Irrespective of their individual level of sophistication, non-accredited investors might potentially benefit from the positive spillovers of the monitoring and screening efforts of any participating accredited investors that have more extensive due diligence expertise. However, non-accredited investors that tend to hold minority stakes might need to perform additional due diligence, given potential differences in the payoffs obtained by accredited versus non-accredited investors.[376]

is enhanced during bad times); and Tarvo Vaarmets, Kristjan Liivamägi, & Tõnn Talpsepp, *How Does Learning and Education Help to Overcome the Disposition Effect?,* 23 Rev. Fin. 801 (2019) (evaluating how investor learning reduces disposition effect using Estonian data and finding heterogeneity in learning ability). *But see, e.g.,* Yao-Min Chiang et al., *Do Investors Learn from Experience? Evidence from Frequent IPO Investors,* 24 Rev. Fin. Stud. 1560 (2011) (presenting evidence of IPO investors in Taiwan that ''individuals become unduly optimistic after receiving good returns.'').

[376] Such differences might be due to differences in terms of securities. For instance, downside protection and anti-dilution options may be negotiated by large investors with greater bargaining power. *See* Healthy Markets Letter (commenting that investors' rights in private placements are ''left to the bargaining power of the parties'' which limits the rights of smaller investors); and NASAA Letter (commenting that ''investors are not treated equally'' in private markets). For example, one study has analyzed data on contractual provisions in PIPEs and documented significant variation in the use of downside protection terms. *See* Matthew T. Billett, Redouane Elkamhi, & Ioannis V. Floros, *The Influence of Investor Identity and Contract Terms on Firm Value: Evidence from PIPEs,* 24 J. Fin. Intermediation 564 (2015). *See also* David J. Brophy, Paige P. Ouimet, & Clemens Sialm, *Hedge Funds as Investors of Last Resort?,* 22 Rev. Fin. Stud. 541 (2009) (showing that hedge funds investing in PIPEs as ''investors of last resort'' protect themselves by requiring substantial discounts, negotiating repricing rights, and entering into short positions of the underlying stocks); and Susan Chaplinsky & David Haushalter, *Financing Under Extreme Risk: Contract Terms and Returns to Private Investments in Public Equity,* 23 Rev. Fin. Stud. 2789 (2010) (examining control rights and other contractual terms in PIPE transactions with financially constrained issuers). We recognize that evidence from PIPEs need not generalize to non-reporting companies that account for the majority of private placement issuers. However, because Form D does not provide disclosure of contractual terms and private placement memoranda from Regulation D or Section 4(a)(2) offerings are not required to be filed, data on the terms obtained by various investors in private placements is generally not available.

Studies have also documented terms negotiated in VC contracts. *See, e.g.,* Steven N. Kaplan & Per Stromberg, *Characteristics, Contracts, and Actions: Evidence from Venture Capitalist Analyses,* 59 J. Fin. 2177 (2004) (documenting the use of redemption rights, liquidation rights, and antidilution provisions in VC contracts); and Paul A. Gompers et al., *How do Venture Capitalists Make Decisions?,* 135 J. Fin. Econ. 169 (2020) (surveying 885 institutional VCs at 681 firms and documenting various VC practices, including the use of various deal terms, such as anti-dilution protection (which gives the VC more shares if the company raises a future round at a lower price), pro rata rights (which give investors the right to participate in the next round of funding), liquidation preferences (which give investors a seniority position in liquidation), participation rights (which allow VC investors to combine upside and downside protection so that VC investors first receive their downside protection and then share in the upside), and redemption rights (which give investors the right to redeem their securities, or demand from the company the repayment of the original amount)).

We further recognize that differences in payoffs of different investor types can be fair compensation for value added by the expertise, advice, governance, and network connections contributed by large investors. *See also* Karen H. Wruck & YiLin Wu, *Relationships, Corporate Governance, and Performance: Evidence from Private Placements of Common Stock,* 15 J. Corp. Fin. 30 (2009) (concluding that PIPEs are more likely to create value when they are associated with increased monitoring and strong governance by PIPE investors).

Other potential benefits resulting from a large investor's control of an issuer include the investor's ability to enter a governance relationship with the issuer or otherwise have input into corporate decisions that reduce the value of such issuer but increase the value of other issuers in which a large investor also has a stake.

• Finally, any potential effects of the proposed amendments on the risks to non-accredited investors should be assessed in the context of the existing economic and market conditions, which allow such investors to establish other financial exposures that might involve a high level of risk or require extensive due diligence, both as part of the securities market (*e.g.,* leveraged investments in individual listed securities; short positions; holdings of registered securities of foreign, small-cap, and over-the-counter (OTC) issuers; and holdings of registered nontraded securities, including REITs and structured notes) and outside of the securities market (*e.g.,* holdings of futures, foreign exchange, real estate, individual small businesses, peer-to-peer lending, and other personal financial transactions that may entail high risk or leverage). Thus, some of the new capital invested in exempt offerings by non-accredited investors under the proposed amendments might have otherwise been allocated to other assets with high risk or extensive due diligence requirements.

Some of the proposed amendments affect the same offerings and issuers or have mutually reinforcing or partly offsetting effects, which makes it more difficult to draw conclusions about the net effects of the proposed amendments package as a whole. For example, it is difficult to predict how the amendments that expand, simplify, and increase the uniformity of integration safe harbors will affect issuer reliance on individual exemptions. Nevertheless, we expect that these proposed integration amendments would overall facilitate capital formation by harmonizing requirements and providing additional flexibility to issuers seeking an exemption from registration or transitioning to a registered offering. As another example, the effects of the amendments to provisions regarding eligible security types and eligible categories of issuers in Regulation Crowdfunding might interact. To the extent that reliance on SAFEs is driven by capitalization table concerns, the proposed narrowing of the eligible security types, which would exclude SAFEs from Regulation Crowdfunding, might have minimal effects on issuers if crowdfunding vehicles become eligible under Regulation Crowdfunding as proposed. Furthermore, the proposed amendments relaxing investment limits and raising offering limits in Regulation Crowdfunding might result in mutually reinforcing benefits for capital formation. In a related vein, the proposed amendments to raise offering limits for individual offering exemptions might lead to increased substitution between exemptions. Finally, we recognize that the proposed amendments to exemptions that are currently little used might have limited aggregate economic effects in absolute terms even if the relative changes to the rate of use of those exemptions are substantial.

In a recent release, the Commission has proposed to amend and expand the accredited investor definition.[377] If adopted, those amendments would affect the economic impacts of the amendments proposed here. In particular, some of the effects of the changes to the exempt offerings proposed here that are intended to facilitate exempt offering financing under Regulation D (*e.g.,* expanded integration provisions) or under other exemptions (*e.g.,* exempting accredited investors from the investment limits under Regulation Crowdfunding) might have relatively greater economic effects if issuers can offer securities to an expanded pool of accredited investors as contemplated by the proposed accredited investor definition amendments. In turn, some of the anticipated effects of the proposed changes to facilitate exempt offerings to non-accredited investors (*e.g.,* amendments to the disclosure requirements for sales to non-accredited investors under Rule 506(b); expanded offering limits under Rule 504, Regulation A, and Regulation Crowdfunding; and test-the-waters provisions for Regulation Crowdfunding) might have relatively smaller economic effects if issuers can

[377] *See* Accredited Investor Definition Proposing Release.

access an expanded accredited investor pool as contemplated by the proposed accredited investor definition amendments, and thus become less reliant on offerings to non-accredited investors.

B. Baseline

We examine the economic effects of the proposed amendments relative to the baseline, which comprises the existing regulatory requirements (described in detail in Section I above) and market practices related to exempt offerings (described below).

Generally, the parties affected by the proposed amendments include current and prospective issuers and investors in exempt offerings. To the extent that the proposed amendments affect how issuers choose between registered and exempt offerings, the proposed amendments also might affect issuers and investors in the registered offering market. In cases where intermediaries are involved in exempt offerings and either receive transaction-based compensation or perform some of the offering-related or compliance functions on behalf of issuers, intermediaries would also be affected by the proposed amendments. In particular, Regulation Crowdfunding requires offerings to be conducted through an intermediary's online platform. Thus, to the extent that the amendments affect Regulation Crowdfunding offering activity, they are expected to have direct effects on all crowdfunding intermediaries. In other instances, the effects of the proposed amendments on intermediaries might be more limited (*e.g.,* intermediaries might verify investor status for issuers under Rule 506(c), be authorized by some issuers to test-the-waters with investors prior to an offering, or be drawn to the Regulation A market if they find that the proposed increase in the offering limit makes the underwriting role more cost-effective).

Table 11 [378] summarizes recent data on the Regulation D market.

TABLE 11—OFFERINGS UNDER REGULATION D IN 2019

	Rule 504	Rule 506(b)	Rule 506(c)
Number of New Offerings	476	24,636	2,269.
Amount Reported Raised	$0.2 billion	$1,491.9 billion	$66.3 billion.

As can be seen from Table 11, Rule 506(b) dominates the market for exempt securities offerings. Amounts raised under Rule 506(b) also exceeded the amounts raised in the registered market, estimated to be $1.2 trillion in 2019.[379]

Table 12 [380] summarizes amounts sought and reported raised in offerings under Regulation Crowdfunding since its inception.[381]

TABLE 12—REGULATION CROWDFUNDING OFFERING AMOUNTS AND REPORTED PROCEEDS, MAY 16, 2016–DECEMBER 31, 2019

	Number	Average	Median	Aggregate (million)
Target amount sought in initiated offerings	2,003	$63,791	$25,000	$126.9
Maximum amount sought in initiated offerings	2,003	599,835	535,000	1,174.2
Amounts reported as raised in completed offerings	795	213,678	106,900	169.9

Given the offering limits, crowdfunding is used primarily by relatively small issuers. Table 13 [382] presents data on the characteristics of issuers in crowdfunding offerings.[383]

TABLE 13—CHARACTERISTICS OF ISSUERS IN REGULATION CROWDFUNDING OFFERINGS, MAY 16, 2016–DECEMBER 31, 2019

	Average	Median
Age in years	2.9	1.8
Number of employees	5.3	3.0
Total assets	$455,280	$29,982

[378] This table includes offerings by pooled investment funds. Information on Regulation D offerings, including offerings under Rule 504 and Rule 506, is based on staff analysis of data from Form D filings on EDGAR. The amount raised is based on the amounts reported as ''Total amount sold'' in all Form D filings (new filings and amendments) on EDGAR. Subsequent amendments to a new filing were treated as incremental fundraising and recorded in the calendar year in which the amendment was filed. It is likely that the reported data on Regulation D offerings underestimates the actual amount raised through these offerings. First, Rule 503 of Regulation D requires issuers to file a Form D no later than 15 days after the first sale of securities, but a failure to file the notice does not invalidate the exemption. Accordingly, it is possible that some issuers do not file Form D for offerings relying on Regulation D. Second, underreporting could also occur because a Form D may be filed prior to completion of the offering, and our rules do not require issuers to amend a Form D to report the total amount sold on completion of the offering or to reflect additional amounts offered if the aggregate offering amount does not exceed the original offering size by more than 10 percent.

[379] *See supra* Section II.E.. For a discussion of trends in the Regulation D markets, *see also* Concept Release; and Scott Bauguess, Rachita Gullapalli, & Vladimir Ivanov, *Capital Raising in the U.S.: An Analysis of the Market for Unregistered Securities Offerings, 2009–2017* (U.S. Sec. and Exch. Comm'n, DERA White Paper, Aug. 1, 2018), *available at https://www.sec.gov/dera/staff-papers/white-papers/dera_white_paper_regulation_d_082018.*

[380] *See supra* note 12. Issuers that have not raised the target amount or not filed a report on Form C–U are not included in the estimate of proceeds.

[381] For a discussion of the Regulation Crowdfunding market, *see also* 2019 Regulation Crowdfunding Report.

[382] *See supra* note 12. The estimates are based on data from Form C or the latest amendment to it, excluding withdrawals.

[383] *See also* 2019 Regulation Crowdfunding Report.

TABLE 13—CHARACTERISTICS OF ISSUERS IN REGULATION CROWDFUNDING OFFERINGS, MAY 16, 2016–DECEMBER 31, 2019—Continued

	Average	Median
Total revenues	$325,481	$0

Based on information in new Form C filings, the median crowdfunding offering was by an issuer that was incorporated approximately two years prior to the offering and employed about three people. The median issuer had total assets of approximately $30,000 and no revenues (just over half of the offerings were by issuers with no revenues). Approximately ten percent of offerings were by issuers that had attained profitability in the most recent fiscal year prior to the offering.

Table 14 [384] summarizes amounts sought and reported raised in offerings under Regulation A since the effective date of the 2015 Regulation A amendments.[385]

TABLE 14—REGULATION A OFFERING AMOUNTS AND REPORTED PROCEEDS IN $ MILLION, JUNE 19, 2015–DECEMBER 31, 2019

	Tiers 1 & 2	Tier 1	Tier 2
All Filed Offerings:			
Aggregate dollar amount sought	$11,170.2 million	$1,101.5 million	$10,068.6 million.
Number of offerings	487	145	342.
Average dollar amount sought	$22.9 million	$7.6 million	$29.4 million.
Offerings Qualified by Commission Staff:			
Aggregate dollar amount sought	$9,094.8 million	$759.0 million	$8,335.8 million.
Number of offerings	382	105	277.
Average dollar amount sought	$23.8 million	$7.2 million	$30.1 million.
Capital Reported Raised:			
Aggregate dollar amount reported raised	$2,445.9 million	$230.4 million	$2,215.6 million.
Number of issuers reporting proceeds	183	39	144.
Average dollar amount reported raised	$13.4 million	$5.9 million	$15.4 million.

As can be seen, Tier 2 accounted for the majority of Regulation A offerings (70 percent of filed and 73 percent of qualified offerings), amounts sought (90 percent of amounts sought in filed offerings and 9 percent of amounts sought in qualified offerings), and reported proceeds (91 percent) during this period.

Because reliance on integration safe harbors is not required to be disclosed, we lack a way to reliably quantify the pool of issuers and offerings that would be affected by the proposed approach to integration. Nevertheless, some indication of the scope of issuers affected by integration provisions may come from indirect sources: In 2019, based on the analysis of Form D filings, we estimate that approximately 1,256 issuers other than pooled investment funds filed more than one Form D (excluding amendments) and an additional 258 issuers filed one new Form D and either had a registration statement declared effective, had a Regulation A offering statement qualified, or filed a new or amended Form C. Many private placements, however, rely on Section 4(a)(2) rather than on the Regulation D safe harbor. We lack data on Section 4(a)(2) offerings due to the absence of filing or disclosure requirements associated with this statutory exemption. Also, for issuers filing forms for multiple offerings, in most cases we cannot reliably determine if, and when, proceeds were raised or the offering closed, or whether the specific offerings were eventually subject to integration or not. For instance, a closeout filing on Form D is not required, making it difficult to know when the offering closed or how much was raised. Similarly, proceeds data for Regulation A and Regulation Crowdfunding can be lagged or incomplete.

C. Economic Effects of the Proposed Amendments

1. Integration

We are proposing to revise the framework relating to the integration analysis. As discussed in greater detail in Section II.A, the proposed amendments would update and expand existing integration provisions to provide greater uniformity and flexibility to issuers regarding integration of offerings.

Considered together, the proposed amendments are expected to facilitate compliance and promote greater consistency and uniformity across exemptions, and thus promote the use of exemptions by issuers that undertake multiple offerings.

Benefits

The proposed amendments expand and simplify the integration framework, provide greater uniformity in integration tests applicable across offering types, and in many cases shorten the period of time that issuers must wait between offerings to rely on a safe harbor from integration. The proposed amendments are expected to reduce the cost of compliance with the integration requirements for issuers. In particular, we expect that the reduction in the safe harbor period from six months to 30 days would facilitate compliance for issuers that might need to adjust their financing strategy as a result of evolving business circumstances, growing financing needs, or an inability to attract sufficient capital through a single offering method. A six-month waiting period between consecutive offerings, or the need to assess whether consecutive

[384] *See supra* note 12. The estimates include post-qualification amendments, and exclude abandoned or withdrawn offerings. *See also* 2020 Regulation A Review.

[385] *See also* Figures 1 and 2 in the 2020 Regulation A Review, which provide a graphic depiction of the data conveyed in Table 14.

offerings can be treated as separate offerings or whether they must be integrated, can significantly limit such issuers' ability to raise sufficient capital or react to dynamic business conditions. Similarly, expanding the bright-line safe harbors from integration to a broader set of offering types is expected to reduce the costs for issuers seeking to raise capital through multiple offering exemptions. Overall, greater emphasis in the integration analysis on whether a particular offering satisfies the registration requirements or conditions of the specific exemption, as proposed, is expected to reduce integration-specific compliance efforts. The proposed amendments are expected to reduce the costs of compliance with the provisions of the exemptions for issuers that conducted an offering before, or close in time with, another offering, especially in light of the expansion of capital raising options following the JOBS Act. The resulting decrease in compliance costs might encourage additional issuers to pursue one or more exempt offerings or to pursue a private placement and a registered offering.

The proposed amendments are expected to be particularly beneficial to young, financially constrained, or high-growth issuers whose capital needs, and thus preferred capital raising methods, may change more frequently. The flexibility may be especially valuable in cases where one or more of the exempt offerings conducted by an issuer is subject to offering limits, as well as in cases where an issuer conducts multiple offerings that are subject to different solicitation, disclosure, offering size, or investor requirements. Overall, this flexibility may promote capital formation and enable issuers to optimize their financing strategy so as to attain a lower overall cost of capital while raising the required amount of external financing.

The benefits of the proposed amendments to issuers discussed above also are expected to accrue to the shareholders of those issuers by enhancing shareholder value, particularly if the increased flexibility in accessing external financing enables issuers to more efficiently pursue high-growth investment opportunities.

We recognize that the benefits of the proposed rules may be limited in a range of circumstances:

- In cases where the proposed amendments are codifying existing guidance, to the extent that the market has already developed practices aligned with the existing guidance, the effects of the proposed amendments relative to the baseline would be limited;
- Given that the vast majority of exempt offerings, and the capital raised through such offerings, relies on Rule 506(b) under Regulation D (or Section 4(a)(2)), the benefits of expanding the integration safe harbors for other types of offerings under the proposed amendments could be limited; [386] and
- Rule 506(b) offerings do not have offering limits, and most do not involve non-accredited investors, thus a change in integration provisions is unlikely to affect issuers that continue to engage in such offerings in practice because such issuers would likely be able to meet all of their financing needs without having to conduct multiple offerings and would not have to resort to other offering types that permit greater non-accredited investor participation.[387]

Costs

The proposed amendments could result in additional financing being raised from non-accredited investors without registration requirements.[388] The disclosure requirements of all of these exemptions are less extensive than the requirements associated with a registered offering, which may in some cases lead to a weakening of investor protections. Another potential concern is that a decrease in the integration of multiple offerings might result in inadvertent overlaps in solicitation of investors for offerings with different communications provisions. For example, Rule 506(b) and Section 4(a)(2) offerings that do not allow general solicitation may be preceded by offerings relying on exemptions that allow general solicitation (such as Regulation Crowdfunding, Regulation A, or Rule 506(c)), which could condition the market for the subsequent private placement offering. This may potentially increase risks to any non-accredited investors participating in the subsequent private placement offering if such investors rely on the information communicated through general solicitation because private placement offerings do not afford the same investor protections as, for instance, Regulation A and Regulation Crowdfunding.

We anticipate a number of factors would mitigate these potential costs. The proposed amendments do not alter the substantive requirements of individual offering methods, including ones relating to investor protection. In addition, the proposed amendments would more closely align issuer efforts to comply with integration provisions and requirements of the respective exemptions, including, importantly, the provisions deemed important for investor protection in the context of each respective exemption. Moreover, nothing in the proposed amendments would enable a scheme to evade the requirements of the respective exemption or, in the context of registered offerings, the registration and gun jumping provisions of the Securities Act. In this regard, proposed Rule 152 specifies that the safe harbors are not available to any issuer for any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Securities Act. Further, issuers would remain prohibited from using general solicitation in a Rule 506(b) offering, through any means, irrespective of the proposed integration amendments.

The proposed amendments contain several other safeguards that are expected to minimize potential costs to investors. The provision in proposed Rule 152(a)(1)—that an issuer who is conducting or has conducted an offering that permits general solicitation (''Offering 1'') and is conducting a concurrent offering or has conducted a subsequent offering that does not permit general solicitation (''Offering 2'') must have a reasonable belief, based on the facts and circumstances, that the prospective investors in Offering 2 were not solicited through general solicitation from Offering 1 or that the investors established a substantive relationship with the issuer prior to the commencement of the offering not permitting general solicitation—is expected to minimize the effect of possible solicitation overlaps for multiple offerings. This provision would bolster existing solicitation restrictions in the individual exemptions and focus the integration analysis on issuer compliance with solicitation restrictions. Further, proposed Rule 152(a)(2) specifying that an issuer conducting an exempt offering for which general solicitation is permitted concurrently with an offering under another exemption for which

[386] We recognize that other amendments we are proposing today might increase the use of Rule 506(c), Rule 504, Regulation A, and Regulation Crowdfunding.

[387] We recognize that the amendments we are proposing today to non-accredited investor disclosure requirements might increase the incidence of non-accredited investors in Rule 506(b) offerings.

[388] For example, conducting a Rule 506(b) offering and a Regulation A or Regulation Crowdfunding offering may enable an issuer to reach a broader non-accredited investor base and/or raise a greater amount of non-accredited investor capital. Certain exemptions (Regulation Crowdfunding, Regulation A Tier 2) also conditionally exempt securities offered under the respective exemption from the number of shareholders of record for purposes of Section 12(g).

general solicitation is permitted must include appropriate legends in its general solicitation would provide notice to investors and thereby help minimize potential confusion about the offering method, reducing the risk of uninformed investor decisions as a result of reliance on preliminary information contained in such solicitations.

The proposed safe harbors from integration are designed to minimize potential risks to investors. The 30-day period in the first proposed safe harbor is expected to minimize inadvertent overlaps between offerings and investor solicitation for different offerings while providing issuers greater flexibility to adjust their financing strategy as a result of evolving circumstances. Moreover, the proposed safe harbor would provide that if an offering that does not permit general solicitation follows a registered offering or an exempt offering that permits general solicitation, the investors in the private offering either must not have been solicited through the use of the registration statement or the prior general solicitation or must have developed a substantive relationship with the issuer prior to the commencement of the private offering. In addition, the proposed amendment to Rule 506(b) providing that where an issuer conducts more than one offering under Rule 506(b), the number of non-accredited investors purchasing in all such offerings within 90 calendar days of each other would be limited to 35 is expected to address the concern that failure to integrate multiple such offerings could result in sales to a large number of non-accredited investors.

The second proposed safe harbor concerns offerings under Rule 701 or Regulation S. As discussed above, Rule 701 offerings involve compensation agreements with employees and other parties with a pre-existing relationship with the issuer, and thus excluding such offerings from integration is not likely to raise meaningful investor protection concerns. The proposed amendments would permit an issuer conducting an offering with general solicitation to undertake a Regulation S offering using general solicitation so long as the general solicitation activity is not undertaken for the purpose of conditioning the U.S. market for any of the securities being offered in reliance on Regulation S. The proposed amendments also would require a Regulation S issuer that engages in general solicitation activity to prohibit resales to U.S. persons of the Regulation S securities for a period of six months from the date of sale except to QIBs or IAIs (which are expected to have the financial sophistication and ability to sustain the risk of loss of investment or fend for themselves). We expect these provisions would strengthen protections for United States investors from the risk of flowback of such securities to the United States.

The third proposed safe harbor concerns offerings for which a Securities Act registration statement has been filed following a completed or terminated private placement. Because private placements would continue to restrict general solicitation, the impact on investors in the private placement, most of which are deemed to have the financial sophistication and ability to sustain the risk of loss of investment or fend for themselves, is likely to be minimal. In turn, because private placements do not permit general solicitation, and because the extensive registration requirements would apply to the registered offering, it is unlikely to have any impact on investors in the registered offering. The third proposed safe harbor also provides that a registered offering would not be integrated if made subsequent to a completed or terminated exempt offering for which general solicitation is permitted but that was either limited to QIBs and IAIs or took place more than 30 days prior to the offering. This is similar to current Rule 147(h), Rule 147A(h), and Rule 255(e) of Regulation A. Because of the extensive protections built into the registration requirements and the 30-day waiting period that would apply if a solicitation involved investors other than QIBs or IAIs, the proposed safe harbor is unlikely to have adverse impacts on investors in the registered offering. In cases where solicitation was limited to QIBs and IAIs, due to the sophistication of those investors, we do not believe that the lack of a 30-day waiting period in the proposed integration safe harbor would meaningfully affect investor protection. The proposal is also consistent with Securities Act Section 5(d) and Rule 163B, which allow solicitation of QIBs and IAIs at any time prior to a registered offering.

The fourth proposed safe harbor extends the approach in Regulation A and Rules 147 and 147A and in the guidance regarding Regulation Crowdfunding to exclude any prior offer or sale from integration with offers and sales under Rule 147, Rule 147A, Regulation Crowdfunding, Rule 504(b)(1)(i), (ii), or (iii), and Rule 506(c). The disclosure and substantive requirements of these exemptions should minimize potential costs to investors from not integrating these offerings with prior offers and sales.

We believe these proposed amendments appropriately calibrate the effort required on the part of issuers to address potential overlaps between multiple offerings by the same issuer that may raise investor protection concerns. Overall, because the proposed amendments require that issuers continue to meet the conditions of each exemption they are relying upon, and because investor protection provisions of each exemption as well as general anti-fraud provisions would continue to apply, we believe that the proposed amendments would not have significant adverse effects on investor protection.

We recognize that issuers seeking to rely on one or more of the proposed integration provisions would incur costs of analyzing the facts and circumstances of the contemplated offerings and/or the respective integration safe harbors. While we believe that the proposed amendments substantially simplify and streamline the integration safe harbors, we recognize that some issuers might find that navigating the amended integration framework requires additional time and effort. Because the integration safe harbors would remain voluntary, we expect that issuers would only rely on the safe harbors if such reliance might reduce their compliance costs. This would not affect all issuers. For instance, new entrants to the market would have to conduct this analysis presently, with more a more confusing and difficult to navigate integration framework.

Effects on Efficiency, Competition, and Capital Formation

The proposed integration provisions are expected to increase capital formation through exempt offerings and to enable issuers to combine financing under different exemptions more optimally as part of their financing strategy. However, the net capital formation benefits may be modest to the extent that issuers currently can avoid the need for multiple offerings (*e.g.,* by relying on a single Rule 506(b) offering with no, or few, non-accredited investors but seeking a larger amount of financing).

It is unclear how the proposed integration amendments would affect competition for investor capital. To the extent the proposed amendments might reduce issuer compliance costs associated with accessing a broader range of offering exemptions (*e.g.,* multiple JOBS Act exemptions), competition for investor capital in those market segments might increase. However, net effects on overall competition for investor capital might be limited to the extent that issuers reallocate between offering exemptions or additional investor capital is drawn to these markets under the proposed amendments.

As discussed above, the amendments might offer the greatest benefits to smaller issuers that have varying financing needs or to issuers that need to rely on multiple offering exemptions to meet their financing needs (*e.g.,* because they lack an established accredited investor network to support financing exclusively through Rule 506(b) and need to rely on non-accredited investors or general solicitation).

By streamlining and harmonizing integration safe harbors, the proposed amendments are expected to improve the efficiency of an issuer's compliance efforts, particularly for issuers conducting multiple offerings.

Reasonable Alternatives

As an alternative, we could propose a uniform safe harbor with a time period other than 30 days (*e.g.,* 15, 45, 60, 75, or 90 days). Compared to the proposed amendments, the alternative of a universal safe harbor with a shorter (longer) time period than proposed would reduce (increase) the likelihood that multiple offerings would be integrated and, accordingly, reduce (increase) issuer costs of compliance. Compared to the proposed amendments, the alternative of a safe harbor with a shorter (longer) time period than proposed would provide issuers with greater (lower) flexibility in tailoring their capital raising strategy to changing financing needs and market conditions. Compared to the proposed amendments, such an alternative also could increase (reduce) the number of instances where issuers improperly divide a single plan of financing into multiple offerings.

The proposed amendments would replace the five factor test. As another alternative, we could codify the use of the five factor test for all analyses of integration. Compared to the proposed amendments, such an alternative could be more successful in identifying instances where issuers improperly divide what is economically a single offering into multiple offerings to avoid exemption limitations. However, it also would result in additional costs for issuers and reduced flexibility to combine multiple offering methods.

Request for Comment

86. Would the proposed amendments facilitate issuer compliance and enhance their ability to access capital markets and meet their financing needs?

87. Would an alternative integration approach achieve greater capital formation benefits? If so, which one? Would it impose additional costs?

88. Would the proposed approach to integration allow issuers to reduce their compliance costs or other costs of raising capital? Would the proposed approach to integration facilitate transition to a registered offering for issuers that previously relied on offering exemptions? Would the proposed approach to integration allow issuers to transition more easily among offering exemptions?

89. Which categories of issuers would benefit the most from the proposed approach to integration? Would the proposed approach to integration benefit smaller and younger issuers and promote competition?

90. Would there be costs to investors as a result of the proposed approach to integration? What would those costs be? What categories of investors would be most affected? What factors could mitigate such costs? Would an alternative integration safe harbor or guideline reduce costs to investors? If so, which one?

91. What would be the costs and benefits of shortening the period in the integration safe harbor to 30 days, as proposed? What would be the economic effects of an alternative time period, such as 15, 45, 60, or 90 days? What would be the economic effects of eliminating the waiting period entirely?

2. General Solicitation and Offering Communications

a. ''Demo Days'' and Similar Events

As discussed in greater detail in Section II.B.1 above, we are proposing to add certain ''demo day'' communications to the list of communications that would not be deemed general solicitation.

Benefits

The proposed amendments to Rule 148 specify that certain limited ''demo day'' activities would not be deemed general solicitation. These events are generally organized by a group or entity (such as a university, angel investors, an accelerator, or an incubator) that invites issuers to present their businesses to potential investors, with the aim of securing investment. These amendments are expected to benefit issuers by expanding the range of options for communicating about their business with prospective investors without incurring the cost of restrictions associated with general solicitation and by allowing them to more efficiently access potential investors. These benefits may be relatively more pronounced for small and emerging issuers that may not have a sufficient existing angel investor network to rely on in a Rule 506(b) or Section 4(a)(2) offering.

Costs

We do not expect significant costs to investors due to the proposed amendments specifying that certain limited ''demo day'' activities would not be deemed general solicitation because the proposed exclusion significantly restricts permissible activities of ''demo day'' sponsors. In particular, under the proposed amendment, the sponsor of the seminar or meeting would not be allowed to make investment recommendations or provide investment advice to attendees of the event; engage in any investment negotiations between the issuer and investors attending the event; charge attendees of the event any fees, other than reasonable administrative fees; receive any compensation for making introductions between event attendees and issuers or for investment negotiations between such parties; or receive any compensation with respect to the event that would require registration of the sponsor as a broker-dealer or an investment advisor. These restrictions are expected to mitigate the risk that investors would be improperly induced into an investment as a result of misleading information or sales pressure from financially incentivized ''demo day'' sponsors.

Effects on Efficiency, Competition, and Capital Formation

The proposed amendments are expected to make it easier for issuers to participate in ''demo days'' without incurring the costs of restrictions associated with general solicitation. To the extent that the proposed amendments encourage some additional issuers to participate in demo days, and such participation facilitates their efforts to raise capital, issuers might realize capital formation benefits. Overall, the effects of the amendments on efficiency, competition, and capital formation are expected to be modest because issuers may offer securities to the same individuals and groups other than through a demo day.

Reasonable Alternatives

As an alternative, we could have proposed a definition of general solicitation that would either narrow or expand the scope of communications that constitute general solicitation. The alternative of narrowing (expanding) the scope of communications that constitute general solicitation, either through changes to the examples of communications that constitute general solicitation or through a definition of general solicitation, would provide greater (lower) flexibility to issuers with regard to the manner of communicating offers of securities and reaching prospective investors, potentially expanding (limiting) the ability of issuers that lack an established network of investors with whom they have a pre-existing relationship to raise capital through an exempt offering. Narrowing (expanding) the scope of communications that constitute general solicitation also could expose investors, including non-accredited investors, to more (fewer) offers of securities from prospective issuers. Additional offers of securities might reduce investor search costs for investors eligible and seeking to invest in the offerings of issuers that engage in solicitation, enabling investors to potentially make more informed decisions and allocate capital more efficiently to a broader range of investment opportunities, and vice versa. The alternative of providing a specific definition of general solicitation might incrementally reduce the compliance costs of issuers to determine whether communications that fall outside the list of provided examples constitute general solicitation. However, this alternative could decrease the flexibility for issuers to consider all relevant facts and circumstances in determining whether a particular communication constitutes general solicitation.

As another alternative, we could simplify the existing framework for all exempt offerings by deregulating offers, thus eliminating general solicitation restrictions, and focusing the requirements on sales.[389] This alternative would significantly expand the options for pre-offering and offering-related communications, giving issuers greater flexibility and reducing costs compared to the proposed amendments, some of which expand pre-offering communications but impose additional conditions (such as filing and legending). However, by shifting the investor protections to requirements for sales and anti-fraud provisions, this alternative might result in increased risk of confusion among those investors that rely on information in offers and fail to compare the information in offers to disclosures required in conjunction with a sale.

Request for Comment

92. What are the economic effects of the proposed ‘‘demo day’’ amendments? Would the proposed amendments encourage greater reliance on ’’demo days’’? Would the proposed amendment benefit issuers and investors?

93. Should we prescribe a definition of general solicitation that either narrows or broadens the scope of that term? If so, how should we define the term, and what would be the economic effects of adopting such a definition?

b. Offering Communications

As discussed in greater detail in Section II.B.2 above, we are proposing a generic testing-the-waters exemption that would permit an issuer to use testing-the-waters materials for an offer of securities prior to making a determination as to the exemption under which the offering may be conducted. In connection with this exemption, we are proposing to require that the generic solicitation materials be made publicly available as an exhibit to the offering materials filed with the Commission, if the Regulation A or Regulation Crowdfunding offering is commenced within 30 days of the generic solicitation. Further, if the issuer sells securities under Rule 506(b) within 30 days of the generic solicitation to non-accredited investors, the issuer would be required to provide such investors with any written communication used under the proposed generic testing-the-waters exemption. We are also proposing to expand permissible offering communications under Regulation Crowdfunding by permitting testing-the-waters prior to filing a Form C with the Commission. Under the proposed rule, issuers would be required to use legends and to include any solicitation materials as an exhibit to Form C that is filed with the Commission.

The economic effects of the proposed amendments would be limited to the extent that issuers are reluctant to test-the-waters in reliance on the proposed amendments, for example, as a result of the proposed filing requirements or applicable state restrictions.

Benefits

In general, allowing issuers to gauge interest through expanded testing-the-waters is expected to reduce uncertainty about whether an offering could be completed successfully. Allowing solicitation prior to filing would enable issuers to determine market interest in their securities before incurring the costs of preparing and filing an offering statement. Testing-the-waters before filing can reduce the risk of a failed offering and the associated reputational costs. If, after testing-the-waters, the issuer is not confident that it would attract sufficient investor interest, the issuer could consider modifying offering plans or the target amount of the offering, reconsidering the contemplated offering structure and terms, postponing the offering, or exploring alternative methods of raising capital. This option might be useful for smaller issuers, especially early stage issuers, first-time issuers, issuers in lines of business characterized by a considerable degree of uncertainty, and other issuers with a high degree of information asymmetry. The ability to engage in testing-the-waters communications might attract certain issuers—those that may be uncertain about the prospects of raising investor capital—to consider using an exempt offering, thus potentially promoting competition for investor capital as well as capital formation. Importantly, the proposed amendments could benefit issuers that find after testing-the-waters that their offering is unlikely to be successful and choose not to proceed with an offering, thus saving disclosure preparation and filing costs (including, where applicable, the cost of review or audit of financial statements by an independent accountant), lowering the risk of disclosure of potentially sensitive proprietary information to competitors and mitigating the reputational cost from a failed offering.

The proposed amendments to enable issuers to engage in generic test-the-waters communications prior to determining the specific exemption type might provide additional flexibility to gauge market interest that is likely to be especially valuable for smaller, less well known issuers that may lack an accurate understanding of prospective investor demand for their securities. Similarly, the proposed amendments to permit issuers to solicit investor interest, orally or in writing, in Regulation Crowdfunding offerings are expected to benefit issuers by enabling them to gauge investor interest in a prospective Regulation Crowdfunding offering before incurring the full costs of preparing and filing an offering circular.

The requirement in the proposed test-the-waters exemptions to include legends is expected to provide notice to investors of the preliminary nature of these communications. We propose to require issuers that proceed with an offering under Regulation A or Regulation Crowdfunding after testing-the-waters to include as exhibits to the offering statement any written materials used in a generic test-the-waters communication within 30 days prior to the filing of a Regulation A or Regulation Crowdfunding offering statement. We also propose to require issuers to include as exhibits any

[389] *See* CrowdCheck Letter.

Regulation Crowdfunding test-the-waters materials. Combined, these requirements are expected to provide informational benefits to investors and allow them to compare the solicitation materials with the offering statement disclosures, leading to potentially more informed investment decisions. The proposed requirement to provide materials used for a generic test-the-waters solicitation to any non-accredited investors in a Rule 506(b) offering that occurs within 30 days of such solicitation is expected to incrementally enhance the ability of investors in the offering to make informed decisions.

The proposed amendments expanding communications permissible under Regulation Crowdfunding after the filing of Form C are expected to benefit issuers by allowing greater flexibility to communicate with prospective investors about the offering. Being able to communicate with prospective investors outside the communications channels provided by the online crowdfunding platform is expected to facilitate the efforts of issuers to solicit prospective investors and advertise the offering, potentially resulting in a higher rate of offering success and more capital formation, particularly for lesser known, small issuers. Oral off-portal communications about the terms of the offering might incrementally reduce costs of searching for information about offering terms for some prospective investors (*e.g.,* investors that may have prior knowledge of, or be customers of, the issuer) that would prefer to find out about offering terms without first reviewing the crowdfunding platform's website and communications channels. Should such prospective investors decide to invest in an offering, they would still have to do so through the portal and would have access therein to the filed offering materials, other offering information, and investor education materials required by Regulation Crowdfunding. Communications intended to drive traffic to the intermediary's website, and therefore to the issuer's offering, would continue to be governed by the Regulation Crowdfunding advertising restrictions.

Costs

We recognize that there might also be potential costs associated with expanding the use of testing-the-waters communications in connection with a contemplated Regulation Crowdfunding offering or another exempt offering. If the contents of the offering circular differ substantively from the material distributed through test-the-waters communications, and if investors rely on test-the-waters materials when making investment decisions, this might lead investors to make less informed investment decisions. For example, if the information conveyed through test-the-waters communications is an incomplete representation of the risk of an offering, and if investors fail to read the subsequent offering circular before making the investment decision, they might make a less informed investment decision. These investor costs might be exacerbated to the extent that investors in Regulation Crowdfunding offerings are likely to be small and relatively less sophisticated and thus less equipped to process information contained in test-the-waters communications.

These potential investor protection concerns are expected to be alleviated by several factors:

- The application of the anti-fraud provisions of the federal and state securities laws; [390]
- For issuers that proceed with a Regulation Crowdfunding offering:
  - The availability of an offering circular, allowing investors to review disclosures compliant with Regulation Crowdfunding prior to investing;
  - The proposed requirement that written test-the-waters materials be included as an exhibit to Form C, allowing the public and Commission staff to review written solicitation materials and compare them to the contents of the offering circular;
  - The availability of investor education materials required to be provided by crowdfunding intermediaries before investing; and
  - The continued application of other provisions of Regulation Crowdfunding, including ones expected to provide additional investor protection, such as investment limits, offering limits, crowdfunding intermediary requirements, periodic reporting requirements, and issuer eligibility restrictions; and
- The reputational incentives of issuers and intermediaries, as well as the risk of litigation (particularly for issuers and intermediaries that have assets and that engage in test-the-waters communications).

Further, concerns about costs of expanding test-the-waters communications to investors should be considered in the context of the baseline. Investors in Regulation Crowdfunding offerings today might perform an incomplete analysis of the offering risks if they base their investment decision on the promotional video or summary information from the crowdfunding platform's campaign page and fail to review the entire contents of the offering materials. Low investment minimums (many around $100, and some as low as $25) might make it optimal for investors to allocate a limited amount of time to due diligence regarding prospective crowdfunding investments. While some unscrupulous issuers might seek to disseminate misleading information through test-the-waters communications, such issuers or intermediaries already could engage in misleading communications today, and such misleading offering communications would remain in violation of the anti-fraud provisions of the federal securities laws.

The proposed amendments to Rule 204 of Regulation Crowdfunding expanding the ability to advertise the ongoing offering and discuss it in off-portal oral and written communications with prospective investors might similarly result in some investors receiving incomplete information about the offering from the issuer, and, if such investors fail to review the offering circular and other filed offering materials, potentially making less well informed investment decisions.

Several factors are expected to mitigate potential costs to investors due to expanded off-portal communications under the proposed amendments:

- The availability of the offering circular containing disclosures compliant with Regulation Crowdfunding prior to investing, as well as the continued applicability of Rule 204 requirements, such as the requirement to include a link directing the potential investor to the intermediary's platform where the Form C disclosure document is available;
- The application of anti-fraud provisions of federal and state securities laws;
- The availability of investor education materials required to be provided by funding portals;
- The other provisions of Regulation Crowdfunding, including ones expected to provide additional investor protection, such as investment limits, offering limits, crowdfunding intermediary requirements, periodic reporting requirements, and issuer eligibility restrictions, continue to apply; and
- The reputational incentives of issuers, as well as the risk of litigation (for issuers with assets).

The proposed amendments that allow issuers to engage in testing-the-waters prior to determining the specific

[390] Test-the-waters communications under Regulation Crowdfunding would be treated as offers of securities, similar to test-the-waters communications under Regulation A, Section 5(d), and the recently adopted Rule 163B.

exemption type might lead to investor confusion with regard to the regulatory framework applicable to the contemplated offering, particularly for non-accredited investors that may be less sophisticated. However, for issuers that proceed with an exempt offering, the investor protections of the respective exemption would continue to apply. Importantly, because investors would be able to review the offering circular that clearly delineates the exemption relied upon for issuers that proceed with a Regulation A or Regulation Crowdfunding offering, investors are expected to receive the disclosure necessary to reach an informed investment decision. Furthermore, should an issuer elect to proceed with a Regulation A or Regulation Crowdfunding offering within 30 days of a generic testing-the-waters communication, the test-the-waters materials must be filed as an exhibit to the offering statement, enabling investors and the Commission staff to review test-the-waters materials and compare them against the disclosures in the offering statement. In cases where an issuer decides to proceed with a Rule 506(c) offering after testing-the-waters, non-accredited investors that might have received solicitations would remain restricted from participation in a Rule 506(c) offering.

For issuers that choose not to proceed with a Rule 506(c), Regulation A, or Regulation Crowdfunding offering following testing-the-waters for an exempt offering conducted under the proposed amendments, but that choose instead to undertake an exempt offering under an exemption that does not permit general solicitation, the proposed amendments are not expected to have significant effects on investors in such a private placement or registered offering. Restrictions specific to private placements, including a restriction on general solicitation for a Rule 506(b) or a Section 4(a)(2) offering would continue to apply in that case. In cases of issuers proceeding with a registered offering, gun jumping provisions of the Securities Act and other investor protections associated with registered offerings (including staff review, Section 11 liability, disclosure requirements in the registration statement, and Exchange Act reporting requirements) would continue to apply.

Because the use of test-the-waters communications would remain voluntary under the proposed amendments, we anticipate that issuers would elect to rely on test-the-waters communications only if the benefits anticipated by issuers justify the expected costs. Issuers that elect to test-the-waters under the proposed amendments might incur costs, including direct costs of identifying prospective investors and developing test-the-waters solicitation materials; indirect costs of potential disclosure of proprietary information to solicited investors; and in some instances, potential legal costs associated with liability arising from test-the-waters communications with prospective investors. We note that issuers that proceed with an exempt offering without testing-the-waters similarly might incur costs of searching and soliciting investors, either on their own or through an intermediary.

Effects on Efficiency, Competition, and Capital Formation

The proposed amendments to expand permissible testing-the-waters prior to exempt offerings are expected to facilitate capital formation for small issuers by giving prospective issuers that might not otherwise consider an exempt offering a low-cost method of assessing investor interest in a potential offering and efficiently adjusting their financing strategy to reflect information about market demand. These effects are expected to be particularly significant for issuers contemplating Regulation Crowdfunding offerings that presently have to incur the compliance costs of preparing and filing Form C and the risk of disclosure of proprietary information to competitors, as well as the reputational risk of a failed offering, and do not have a cost-effective way of gauging investor demand. Similarly, the proposed amendments to expand permissible issuer communications in Regulation Crowdfunding offerings might promote capital formation in the Regulation Crowdfunding market by allowing issuers to more effectively reach prospective investors as part of marketing the offering and to more efficiently structure the offering based on feedback from prospective investors. Combined, these amendments might make it easier for the smallest issuers with low investor recognition and limited or no securities offering experience to access the Regulation Crowdfunding market or issue securities pursuant to another offering exemption, resulting in potential positive effects on competition. To the extent that these amendments result in switching of issuers between offering exemptions, the net effects on capital allocation might be modest. However, in that scenario some issuers might still benefit from a lower cost of capital if they are able to obtain preliminary information that helps them to identify the most cost-effective offering method and terms that are likely to attract sufficient investor demand.

Reasonable Alternatives

The proposed amendments permit test-the-waters communications in connection with Regulation Crowdfunding offerings prior to the filing of Form C. As an alternative, we could permit test-the-waters communications both before and after the filing of Form C.[391] This alternative would provide greater flexibility to issuers compared to the proposed amendments, potentially increasing the likelihood that the issuer would raise the desired amount of capital. This option might be most useful for smaller and early stage issuers. This alternative might also require investors to expend additional effort to compare test-the-waters communications after the filing of an offering statement with the filed offering statement disclosures. However, the incremental economic effects of this alternative on investors and issuers might be limited because of the advertising permitted under Rule 204 and because the incremental costs of filing test-the-waters materials might discourage the use of testing-the-waters after the filing of Form C under this alternative.

We are proposing to extend the filing requirement to written test-the-waters communications for issuers that proceed with a Regulation Crowdfunding offering, consistent with the requirements of Rule 255 of Regulation A. As an alternative, we could allow test-the-waters communications prior to a contemplated Regulation Crowdfunding offering but not impose a filing requirement. As another alternative, we could waive the filing requirement for test-the-waters communications prior to any exempt offering, including a Regulation A offering. Issuers that have elected to use testing-the-waters communications have already incurred the cost of preparing the materials, so the incremental direct cost of the requirement to file the materials with the Commission would be relatively low. We recognize that this

[391] Under Regulation A, testing-the-waters is permitted before and after the filing of Form 1–A before the qualification of Form 1–A. However, differently from Regulation Crowdfunding, Regulation A issuers are not able to accept investor commitments between the filing and the qualification of Form 1–A. Under Regulation Crowdfunding, issuers may accept investor commitments upon the filing of Form C because Commission qualification is not applicable to Form C. Thus, permitting test-the-waters communications before the filing of Form C would be more consistent with the test-the-waters communications permissible under Regulation A, before investor commitments may be accepted.

alternative could reduce the indirect costs of some issuers by limiting the ability of the issuer's competitors to discover information about the issuer or the costs associated with requesting confidential treatment for the proprietary portions of the information. However, we note that this information may become available to competitors in any event through the solicitation process or as part of the offering materials (to the extent that the offering materials contain similar information). Furthermore, removing the requirement to publicly file the materials for issuers that proceed with an offering might result in adverse effects on the protection of investors to the extent that it may facilitate fraudulent statements by issuers to all or a selected group of investors that might fail to compare the statements in the solicitation materials against the offering circular. This consideration is especially salient because test-the-waters communications under Rule 255 and under the proposed amendments could be directed at any investor, including non-accredited investors. On balance, we believe that the proposed rule's requirements governing the use of test-the-waters communications appropriately balance the goals of providing flexibility to issuers and protection to investors.

We are proposing to permit test-the-waters communications about a contemplated exempt offering for issuers that have not yet narrowed their offering plans to a specific exemption, so long as the test-the-waters materials contain required legends and, should an issuer proceed with an exempt offering under Regulation A or Regulation Crowdfunding within 30 days, that written test-the-waters communications be filed. As an alternative, we could have proposed permitting test-the-waters communications in conjunction with a contemplated exempt offering that does not currently permit such communications, but required the issuer to have determined and to specify in a legend the offering exemption that would be used. Compared to the proposal, by informing solicited investors about the contours of the exempt offering that is being contemplated, this alternative could potentially increase the utility of the information in the solicitation to prospective investors (*e.g.,* whether the offering would be open to non-accredited investors, and if it is, whether investment limits or other requirements apply). However, because small and early stage issuers might be testing-the-waters to gauge their optimal offering strategy, including how much capital might in principle be raised (and thus, whether a Regulation A offering, or for instance, a Regulation Crowdfunding offering, is more cost-effective), such an alternative would significantly limit the flexibility of issuers to obtain valuable information from pre-offering communications. It also may not result in meaningful investor protection benefits compared to the proposed amendments in light of the legending requirements, anti-fraud provisions, and, for issuers that proceed with an offering, the exhibit filing requirements and other investor protections specific to the respective exemption the issuer uses.

We are proposing to amend Rule 204 to state that oral communications with prospective investors are permitted once the Form C is filed, so long as the communications comply with the requirements of Rule 204. As an alternative, we could expand Rule 204 further, broadening the range of terms an issuer may advertise or not restricting the scope of issues that may be addressed in offering advertisements. Such an alternative would provide greater flexibility to issuers to advertise the offering to prospective investors, which might increase the likelihood of offering success and yield capital formation benefits. However, such an alternative might increase information processing challenges for investors—particularly less sophisticated investors—that might incur greater effort to compare the more extensive advertising content with the offering statement disclosure, or if they are unable to validate the extended advertising content against the offering statement disclosure, potentially be at risk of less informed investment decisions.

Request for Comment

94. Would extending the option to test-the-waters about a contemplated Regulation Crowdfunding offering, as proposed, benefit issuers? If so, how? Would it impose costs on investors? If so, which costs? How could such costs be mitigated?

95. Would extending the option to test-the-waters about a contemplated exempt offering, as proposed, for issuers still determining the offering exemption they plan to rely on, benefit issuers? Which issuers would benefit the most from such an extension? Would it impose costs on investors? If so, which costs? How could such costs be mitigated?

96. Which factors might increase the utility of the proposed amendments to issuers?

97. What would be the economic effects of the alternative of permitting test-the-waters communications for Regulation Crowdfunding issuers without a filing requirement? Would it result in costs to investors?

98. Would issuers benefit from the proposed amendments specifying that oral communications are permitted in Regulation Crowdfunding offerings once the Form C is filed? What would be the costs and benefits of the alternative of expanding the scope of permissible advertising or not limiting the scope of permissible advertising?

3. Rule 506(c) Verification Requirements

As discussed in Section II.C above, to address some of the concerns about challenges and costs associated with accredited investor status verification in Rule 506(c) offerings, the proposed amendments would add a new item to the non-exclusive list in Rule 506(c) that would allow an issuer (or those acting on its behalf) to establish that an investor remains an accredited investor as of the time of sale if the issuer (or those acting on its behalf) previously took reasonable steps to verify that investor as an accredited investor, the investor provides a written representation to that effect to the issuer (or those acting on its behalf), and the issuer (or those acting on its behalf) is not aware of information to the contrary.

Benefits

The proposed addition to the non-exclusive list in Rule 506(c) concerning verification of investors for which the issuer previously took reasonable steps to very accredited investor status is expected to reduce the cost of verification for issuers that may opt to engage in more than one Rule 506(c) offering over time with potential repeat investors. This new method also may help reduce the risk of harm to investors from continually having to provide financially sensitive information to the issuer (or those acting on its behalf) when the additional investor protection benefits of doing so are limited given the pre-existing relationship between the issuer (or those acting on its behalf) and such investors.

Costs

Generally, because the proposed amendment represents an incremental revision to the principles-based approach to verification already incorporated in Rule 506(c), the costs of the proposed amendment are expected to be modest. However, we recognize that some previously verified investors that lose accredited investor status over time might provide written representations that they are accredited investors, and if issuers are not aware of information to the contrary, such issuers might sell securities to those non-accredited investors under Rule 506(c). As noted above, we expect these risks would be mitigated by the pre-existing relationship between the issuer (or those acting on its behalf) and such investors.

Effects on Efficiency, Competition, and Capital Formation

Generally, because the proposed amendments represent an incremental revision to the principles-based approach to verification already incorporated in Rule 506(c), the anticipated effects of the proposed amendments on efficiency, competition, and capital formation are expected to be modest.

Reasonable Alternatives

We are proposing amendments to the existing non-exclusive list of verification methods. As an alternative, we could rescind the non-exclusive list. Compared to the proposed amendments, this alternative could reduce costs for some issuers that presently feel constrained to use one of the listed verification methods, even though other, less costly methods may be better suited for their particular facts and circumstances. However, the effects of eliminating the non-exclusive list might be limited if issuers that presently rely on the listed verification methods continue to do so under a more principles-based approach.

We have proposed to allow issuers to establish that a previously verified investor remains accredited if the investor provides a representation to that effect and the issuer is not aware of information to the contrary. As an alternative, we could allow issuers to make such a determination only for a specific period of time, after which an issuer must verify investor status again to account for potential changes in investor income or net worth. This alternative would result in greater costs, relative to the proposed amendments, stemming from more frequent verification of investor status for repeat purchasers of the issuer's securities. At the same time, this alternative could reduce the likelihood of investors that previously were accredited but subsequently exited accredited investor status (*e.g.,* due to a change in income or net worth) and thus may have a lower ability to incur the risks of a Rule 506(c) offering becoming purchasers in a Rule 506(c) offering.

Request for Comment

99. What are the economic effects of the alternative of rescinding the non-exclusive list of verification methods?

100. What are the economic effects of the alternative of allowing issuers to establish that a previously verified purchaser remains an accredited investor, provided that an investor makes a written representation to that effect, on a time-limited, rather than indefinite, basis?

4. Disclosure Requirements

a. Required Disclosures to Non-Accredited Investors in Rule 506(b) Offerings

The proposed amendments to Rule 502(b) would scale financial disclosure requirements for non-reporting companies that sell to non-accredited investors under Rule 506(b) generally to align those requirements with the disclosures required for offerings under Tier 1 and Tier 2 of Regulation A, which also allows sales to non-accredited investors.

Benefits

The proposed amendments to the Rule 502(b) disclosure requirements for sales to non-accredited investors would lower the burden of preparing financial disclosures, particularly the costs of audited financial statements, for issuers in Rule 506(b) offerings up to $20 million that would no longer be subject to those requirements.[392] We do not have information on the costs of an audit in Rule 506(b) offerings involving sales to non-accredited investors. As a proxy, we consider audit costs reported by Regulation A Tier 2 issuers and smaller reporting company issuers. Based on Regulation A Tier 2 offerings qualified from June 2015 through December 2019, the average (median) audit cost, where reported, was $29,015 ($12,319). Based on information from Audit Analytics, the average (median) audit fees, where available, for reporting companies with market capitalization up to $75 million were $321,695 ($83,000) for years ending in 2018 or 2019.[393] We recognize that these costs may differ from the costs incurred by issuers in Rule 506(b) offerings to non-accredited investors. We estimate that in 2019 among new Rule 506(b) offerings by non-reporting issuers other than pooled investment funds seeking up to $20 million, only 4.6 percent (565 out of 12,404) had at least one non-accredited investor.[394]

Lowering costs of sales to non-accredited investors under Rule 506(b) might expand access to capital for some issuers that are not able to obtain sufficient external financing through other methods or through sales of securities to accredited investors only under Rule 506(b). Compliance cost savings in the offering process and expanded access to external financing are expected to enhance shareholder value and thus benefit the issuer's existing shareholders.

As a result of lower disclosure costs, some issuers in Rule 506(b) offerings that presently do not sell securities to non-accredited investors might be more willing to sell securities to non-accredited investors, which could increase the number of issuers subject to the amendments compared to the estimates above. If the amendments result in more issuers selling securities to non-accredited investors under Rule 506(b), those non-accredited investors could benefit from an expanded set of investment opportunities, which might allow them to allocate their capital more efficiently. These benefits might be attenuated if the increase in sales to non-accredited investors under Rule 506(b) is driven by issuers switching from Rule 504, Regulation A, or Regulation Crowdfunding offerings, which also accept non-accredited investors, to Rule 506(b), resulting in little change in the set of investment opportunities available to non-accredited investors. It is difficult to predict whether any increase in sales to non-accredited investors under Rule 506(b) as a result of the proposed amendments would involve the participation of additional non-accredited investors in Rule 506(b) offerings or greater participation by existing non-accredited investors in other issuers' Rule 506(b) offerings. Due to the limited data disclosed about investors on Form D, we cannot estimate the number of unique non-accredited purchasers in such offerings because a single investor may be a

[392] *See, e.g.,* letter from McCarter & English LLP dated September 24, 2019 (stating that the "[t]he [Rule 506(b)] exemption imposes significant disclosure requirements for issuances made to such non-accredited investors, which, when combined with the relatively low number of permitted non-accredited investors, makes this particular facet of the Rule 506(b) exemption impracticable in the vast majority of private placement transactions and therefore little-used.").

[393] Data on audit fees for years ending in 2019 is incomplete and reflects data as recorded in Audit Analytics as of February 20, 2020.

[394] This estimate is based on the analysis of Form D data in initial Form D filings with reported offer size, excluding pooled investment fund issuers and reporting issuers. Reporting issuers are identified based on 2019 filings of annual reports or amendments to them. Most Rule 506(b) offerings had no or few non-accredited investors. *See supra* note 94.

purchaser in multiple Rule 506(b) offerings in a given year.

Costs

The proposed amendments to scale and streamline Rule 502(b) requirements regarding disclosures applicable to sales to non-accredited investors, particularly the repeal of the requirement to provide audited balance sheets in offerings up to $20 million, could result in less informed investor decisions by some non-accredited investors. For instance, to the extent that audited financial statements are valuable for informed investment decisions,[395] scaled disclosures in offerings of up to $20 million might cause some non-accredited investors to incorrectly value the offered securities and to make less well informed investment decisions. Further, the proposed elimination of audit requirements for disclosures to non-accredited investors in Rule 506(b) offerings of up to $20 million might encourage some issuers with relatively higher information risk to sell securities to non-accredited investors given the absence of investment limits in such offerings. The requirement that non-accredited investors must satisfy the knowledge and experience standard of Rule 506(b)(2)(ii) in order to be eligible to participate in an offering under such rule is expected to mitigate some of these costs. Further, in the aggregate these costs to investors are expected to be limited by the cap on the number of non-accredited investors that can participate in a Rule 506(b) offering.

In evaluating the investor costs of the proposed amendments, we consider the baseline, which includes similarly scaled requirements for financial disclosures required to be made to non-accredited investors in Regulation A Tier 1 and Regulation Crowdfunding offerings of the same size. However, those offering types are associated with certain additional provisions intended to protect non-accredited investors, which are not afforded to non-accredited purchasers in Rule 506(b) offerings (*e.g.,* Commission qualification and state registration of Regulation A Tier 1 offerings, offering statement disclosure requirements in Regulation A and Regulation Crowdfunding offerings, as well as investment limit, periodic disclosure, and funding portal requirements in Regulation Crowdfunding offerings). If non-accredited investors remain infrequently represented in Rule 506(b) offerings, the aggregate impacts of the proposed amendments on costs to investors may be limited. However, the aggregate impacts of the proposed amendments on investor protection could be amplified if the scaled requirements encourage additional issuers to accept non-accredited investors in Rule 506(b) offerings.

Effects on Efficiency, Competition, and Capital Formation

If scaled financial statement disclosures lead to more non-accredited investor offerings under Rule 506(b), and if such investors contribute additional capital the issuers would not have otherwise raised from accredited investors in the offering, the proposed amendments might incrementally promote capital formation through Rule 506(b). If non-accredited investor capital drawn to Rule 506(b) offerings under the proposed amendments is mostly reallocated from other offerings to non-accredited investors (*e.g.,* registered offerings or offerings under Regulation A, Regulation Crowdfunding, Rule 504, Rule 147/147A, etc.), the net effects on aggregate capital formation might be limited. However, in that instance, issuers might benefit under the proposed amendments if non-accredited investor offerings under Rule 506(b) enable them to obtain a lower cost of capital (*e.g.,* because of lower compliance costs in Rule 506(b) offerings, even after providing disclosures to non-accredited investors, or because non-accredited investors in Rule 506(b) offerings provide better financing terms).

Streamlining disclosure requirements in Rule 506(b) offerings with non-accredited investors to be more aligned with those under Regulation A is expected to make compliance more efficient for those issuers that undertake these types of offerings along with Rule 506(b) offerings to non-accredited investors.

The proposed amendments also may incrementally increase the availability of Rule 506(b) offerings that allow non-accredited investors, potentially enabling more efficient allocation of capital of non-accredited investors among investment alternatives that are otherwise unavailable to them. While non-accredited investors can participate in other exempt offerings, Rule 506(b) offerings account for the largest share of the exempt offerings market and draw issuers that typically do not participate in Regulation A or Regulation Crowdfunding offerings. The majority of Rule 506(b) offerings are by issuers that are not reporting companies. While non-accredited investors can invest in registered offerings, in most cases issuers in registered offerings have a different profile than issuers in private placements.[396] Expanding opportunities

[395] *See, e.g.,* Erik Boyle & Melissa Lewis-Western, *The Value-Add of an Audit in a Post-SOX World* (Working Paper, Apr. 2018) (finding that an audit continues to be associated with reduced financial statement error at public companies post-SOX and that the size of the effect is economically significant); Petro Lisowsky & Michael Minnis, *The Silent Majority: Private U.S. Firms and Financial Reporting Choices* (Univ. of Chi. Booth Sch. of Bus., Research Paper No. 14–01, Apr. 12, 2018) (finding that ''[n]early two-thirds [of private firms] do not produce audited GAAP financial statements. Moreover, while firms with external capital are more likely to produce audited GAAP statements, we find that thousands of firms with external debt and dispersed ownership do not. Equity and trade credit are potentially more important factors than debt in affecting private firms' production of audited GAAP reports. Finally, young, high growth firms lacking tangible assets are significantly more likely to produce audited GAAP reports relative to established firms with physical assets, suggesting that audited financial reports play an important information role in capital allocation when business activity is less verifiable.''); Michael Minnis, *The Value of Financial Statement Verification in Debt Financing: Evidence from Private U.S. Firms,* 49 J. Acct. Res. 457 (2011) (showing the value of audited financial statements for private debt pricing); David W. Blackwell, Thomas R. Noland, & Drew B. Winters, *The Value of Auditor Assurance: Evidence from Loan Pricing,* 36 J. Acct. Res. 57 (1998) (finding cost of debt reductions in a small sample of small private firms with audited financial statements); and Jeong-Bon Kim et al., *Voluntary Audits and the Cost of Debt Capital for Privately Held Firms: Korean Evidence,* 28 Contemp. Acct. Res. 585 (2011) (confirming the result in a Korean sample). *See also* Ciao-Wei Chen, *The Disciplinary Role of Financial Statements: Evidence from Mergers and Acquisitions of Privately Held Targets,* 57 J. Acct. Res. 391 (2019) (examining ''whether requiring the disclosure of audited financial statements disciplines managers' mergers and acquisitions (M&As) decisions'' and finding that ''the disclosure of private targets' financial statements is associated with better acquisition decisions . . . [and] that this disciplining effect of disclosure is more pronounced when monitoring by outside capital providers is more difficult and costly'').

However, two studies using survey data from the Federal Reserve's Survey of Small Business Finances do not find that an audit is significantly associated with a lower interest rate in small privately held firms. *See* Kristian D. Allee & Teri Lombardi Yohn, *The Demand for Financial Statements in an Unregulated Environment: An Examination of the Production and Use of Financial Statements by Privately-Held Small Businesses,* 84 Acct. Rev. 1 (2009); and Gavin Cassar, Christopher D. Ittner, & Ken S. Cavalluzzo, *Alternative Information Sources and Information Asymmetry Reduction: Evidence from Small Business Debt,* 59 J. Acct. & Econ. 242 (2015).

[396] Investors in public firms can access more extensive disclosures and rely on the protections of the Securities Act registration and Exchange Act reporting regimes. Listed public firms are more likely to have analyst coverage, which may provide additional information to investors.

Past academic studies comparing private and publicly listed firms arrive at somewhat mixed conclusions about investment and innovation behavior of such firms. For example, one study finds that public firms' patents rely more on existing knowledge, are more exploitative, and are less likely in new technology classes, while private firms' patents are broader in scope and more

Continued

for investment in operating company and exempt investment fund offerings under Rule 506(b) might allow non-accredited investors to construct a more efficient portfolio.[397] However, as discussed above, the proposed amendments also might in some cases result in less informed investment decisions, lowering the efficiency of capital allocation.

The incremental economic effects of the proposed amendments to non-accredited investor disclosures in Rule 506(b) offerings discussed above might be modest, relative to the baseline, for several reasons: (i) while non-accredited investors are not subject to investment limits in Rule 506(b) offerings, their participation in Rule 506(b) offerings remains highly limited by the restriction that no more than 35 investors participate and that such investors must meet the knowledge and experience standard of the rule; (ii) non-accredited investors may be unwilling to participate in the majority of Rule 506(b) offerings because of the higher due diligence and transaction costs, potentially higher investment minimums which may be inconsistent with optimal diversification in their portfolio, and significantly lower liquidity involved in private placements due to transferability restrictions and a highly limited secondary market; (iii) issuers may be unwilling to accept non-accredited investors in Rule 506(b) offerings for reasons other than the cost of disclosures (*e.g.,* a preference to attract accredited investors that may be able to bring a larger amount of capital and business expertise, an unwillingness to expand the capitalization table that may make future angel investors or VCs less interested in providing funding to the issuer, an unwillingness to increase the number of non-accredited investors that may draw the issuer incrementally closer to the Section 12(g) registration threshold, or concerns about investor relations and risk of litigation involving less informed investors); and (iv) even though required disclosures to non-accredited investors would be scaled under the proposed amendments, the direct and indirect costs of such disclosures (such as risks of disclosure of proprietary information to a broader range of investors) might discourage issuers from selling to non-accredited investors in Rule 506(b) offerings.

Reasonable Alternatives

We are proposing to repeal audit requirements for Rule 506(b) offerings of up to $20 million involving non-accredited investors. As an alternative, we could repeal audit requirements for all Rule 506(b) offerings, irrespective of offer size. As compared to the proposal, this alternative would result in additional compliance cost savings for issuers in Rule 506(b) offerings with sales to non-accredited investors and might induce additional Rule 506(b) issuers to accept non-accredited investors. However, the relative benefits of compliance cost savings under this alternative might have a more limited impact in larger offerings. Further, such an alternative could increase costs to non-accredited investors as a result of less well informed investment decisions, particularly if non-accredited investors, which are not subject to investment limits in Rule 506(b), invest significant amounts in large Rule 506(b) offerings without the benefit of audited financial statements. Limitations on the number and types of non-accredited investors that are eligible to participate in Rule 506(b) offerings (no more than 35 non-accredited investors are allowed to participate and such investors must possess sophistication) would limit the aggregate costs to non-accredited investors under this alternative. Such an alternative would also be inconsistent with the requirements applicable to other larger offerings available to non-accredited investors, including larger offerings under Regulation A Tier 2 and registered offerings, both of which require audited financial statements.

We are proposing not to require audited financial statement disclosures for sales to non-accredited investors in Rule 506(b) offerings of up to $20 million by non-reporting issuers, irrespective of how much capital is invested by non-accredited purchasers. As another alternative, we could propose not to require audited financial statement disclosures in Rule 506(b) offerings by non-reporting issuers that have up to $20 million in sales to non-accredited investors. On the one hand, this alternative would reduce costs for non-reporting issuers with limited sales to non-accredited investors under Rule 506(b). On the other hand, each non-accredited investor that is a purchaser in such an offering may incur a potentially significant loss of information and increase in due diligence costs, which do not depend on the amount of capital committed by other non-accredited investors to this offering.

As another alternative, rather than scale disclosure requirements in Rule 506(b) offerings by non-reporting issuers of up to $20 million with sales to non-accredited investors, we could waive the requirements for disclosures to non-accredited investors altogether. This alternative would result in significantly lower compliance costs for issuers and could encourage more issuers to sell securities to non-accredited investors under Rule 506(b). However, the loss of information to non-accredited investors could significantly reduce their ability to allocate capital in an informed

exploratory. *See* Huasheng Gao, Po-Hsuan Hsu, & Kai Li, *Innovation Strategy of Private Firms,* 53 J. Fin. & Quantitative Analysis 1 (2018). *See also* Daniel Ferreira, Gustavo Manso, & André C. Silva, *Incentives to Innovate and the Decision to Go Public or Private,* 27 Rev. Fin. Stud. 256 (2014) (showing, in a theoretical model, that private ownership creates incentives for innovation). Another study shows that public firms in external finance dependent (but not in internal finance dependent) industries spend more on R&D and generate a better patent portfolio than their private counterparts. *See* Viral Acharya & Zhaoxia Xu, *Financial Dependence and Innovation: The Case of Public versus Private Firms,* 124 J. Fin. Econ. 223 (2017). A different U.S. study finds that listed firms invest less and are less responsive to changes in investment opportunities compared to observably similar, matched private firms, especially in industries in which stock prices are particularly sensitive to current earnings. *See* John Asker, Joan Farre-Mensa, & Alexander Ljungqvist, *Corporate Investment and Stock Market Listing: A Puzzle?,* 28 Rev. Fin. Stud. 342 (2015). *But see* Naomi E. Feldman et al., *The Long and the Short of It: Do Public and Private Firms Invest Differently?* (Working Paper, 2019) (finding that public firms invest more in long-term assets—particularly innovation—than private firms). *See also* Vojislav Maksimovic, Gordon M. Phillips, & Liu Yang, *Do Public Firms Respond to Investment Opportunities More than Private Firms? The Impact of Initial Firm Quality* (Nat'l Bureau of Econ. Research, Working Paper No. 24104, Dec. 2017) (finding that public firms respond more to demand shocks after their IPO and are more productive than their matched private counterparts, particularly in industries that are capital intensive and dependent on external financing); and Sandra Mortal & Natalia Reisel, *Capital Allocation by Public and Private Firms,* 48 J. Fin. & Quantitative Analysis 77 (2013) (a cross-country study showing that public listed firms take better advantage of growth opportunities than private firms, although the differential only exists in countries with well-developed stock markets).

Some studies also find that private and public firms differ in their financing, cash, and payout decisions, cost of capital, and other characteristics. *See, e.g.,* Kim P. Huynh, Teodora Paligorova, & Robert Petrunia, *Debt Financing in Private and Public Firms,* 14 Annals Fin. 465 (2018); Huasheng Gao, Jarrad Harford, & Kai Li, *Determinants of Corporate Cash Policy: Insights from Private Firms,* 109 J. Fin. Econ. 623 (2013); Sandra Mortal, Vikram Nanda, & Natalia Reisel, *Why Do Private Firms Hold Less Cash than Public Firms? International Evidence on Cash Holdings and Borrowing Costs,* J. Banking & Fin. (in-press, 2019); Roni Michaely & Michael R. Roberts, *Corporate Dividend Policies: Lessons from Private Firms,* 25 Rev. Fin. Stud. 711 (2012); Menachem Abudy, Simon Benning, & Efrat Shust, *The Cost of Equity for Private Firms,* 37 J. Corp. Fin. 431 (2016); Ilan Cooper & Richard Priestley, *The Expected Returns and Valuations of Private and Public Firms,* 120 J. Fin. Econ. 41 (2016); and Serkan Akguc, Jongmoo Jay Choi, & Suk-Joong Kim, *Do Private Firms Perform Better than Public Firms?* (Working Paper, 2015).

[397] In portfolio theory, constraining the set of investment opportunities yields a potentially inferior optimal portfolio. *See, e.g.,* Bodie et al. 2013, *supra* note 375. However, the presence of information frictions due to a lack of investor sophistication might reverse this general prediction and result in lower portfolio risk-adjusted returns. *See supra* note 375.

manner, particularly because a lack of a secondary trading market in many cases precludes effective price discovery through other sources. Alternatively, we could require issuers to provide the same disclosures to non-accredited investors if they provide any disclosures, such as a private placement memorandum, to accredited investors. While such a provision could significantly lower non-accredited investor information risk and due diligence costs in some cases, without dramatically increasing issuer costs (because they already would have to incur many of the direct costs to provide the disclosure to accredited investors), non-accredited investors might suffer a significant loss of information in cases where the issuer's disclosures to accredited investors are limited. The existing requirement that the non-accredited investor satisfy the knowledge and experience standard of Rule 506(b)(2)(ii), as well as the continued application of the anti-fraud provisions of the federal securities laws, might mitigate some of the investor protection risks under this alternative.

We are proposing to extend the disclosure requirements of Regulation A Tier 2 for sales to non-accredited investors by non-reporting issuers under Rule 506(b), irrespective of the size of the Rule 506(b) offering above $20 million. As an alternative, we could propose to extend the financial statement requirements of Regulation A Tier 2 to sales to non-accredited investors in offerings under Rule 506(b) up to $75 million (the proposed Regulation A Tier 2 offer limit), and continue to apply the existing financial statement disclosure requirements (that are aligned with the financial statement disclosure requirements applicable to registration statements) to Rule 506(b) offerings exceeding $75 million that include sales to non-accredited investors. Compared to the proposed amendments, this alternative might increase compliance costs for non-reporting issuers seeking to raise over $75 million under Rule 506(b) and sell securities to non-accredited investors. At the same time, these financial statement disclosures may lower the risk of less informed investment decisions by non-accredited investors in such offerings compared to the proposal, particularly for small and pre-revenue issuers with large financing needs. However, the impact of this alternative may be modest because relatively few offerings would be affected by this alternative compared to the proposal. We estimate that in 2019 there were approximately 383 offerings under Rule 506(b) by non-reporting issuers other than pooled investment funds with offer sizes in excess of $75 million (excluding undefined offer sizes), of which approximately 12 (3.1 percent) offerings involved non-accredited investors.[398] This alternative might also decrease the willingness of non-reporting issuers to accept non-accredited investors in Rule 506(b) offerings exceeding $75 million, resulting in potentially fewer investment opportunities for non-accredited investors compared to the proposal.

Request for Comment

101. What would be the benefits of scaling disclosure requirements for sales to non-accredited purchasers in Rule 506(b) offerings by non-reporting issuers, as proposed? Would the proposed amendments encourage additional non-reporting issuers to sell securities to non-accredited investors in Rule 506(b) offerings? Would sophisticated non-accredited investors participating in such offerings incur costs as a result of the amendments waiving the audit requirements in offerings up to $20 million?

102. What would be the costs and benefits of the alternative of extending scaled disclosure requirements to non-reporting issuers in Rule 506(b) offerings up to $75 million that involve sales to non-accredited investors?

103. What would be the costs and benefits of alternative approaches to reducing the costs of disclosures to non-accredited purchases in Rule 506(b) offerings, such as conditioning the disclosure requirement on the number or amount of sales to non-accredited investors rather than aggregate offering size or waiving the audit requirement irrespective of offering size? Would such alternative approaches result in additional investment opportunities for sophisticated non-accredited investors? Would such alternative approaches result in a decrease in investor protection? What additional investor protections (such as investment limits) would effectively mitigate potential costs to investors in this scenario?

b. Simplification of Disclosure Requirements in Regulation A Offerings

The proposed amendments would extend to Regulation A issuers certain accommodations presently available to reporting companies, namely: (1) The option to redact confidential information from material contracts and certain other agreements filed as exhibits without a need to submit a confidential treatment request; and (2) the option of incorporating by reference financial statement information into Regulation A offering statements. The proposed amendments also would eliminate the requirement to file a draft offering statement as a separate exhibit with Form 1–A and would instead enable automated public dissemination of the draft offering statement through EDGAR, similar to the framework in place for registered offerings. In addition, the proposed amendments would permit the Commission to declare an offering statement, or a post-qualification amendment to such offering statement, abandoned, consistent with the rule applicable to registered offerings.

Benefits

The proposed amendments extending to Regulation A issuers the option to redact confidential information from material contracts and certain other agreements filed as exhibits without a need to submit a confidential treatment request, provided that information is not material and is the type of information that the issuer both customarily and actually treats as private and confidential, are expected to reduce disclosure costs for Regulation A issuers and expedite the filing process by eliminating the need to file a confidential treatment application and the associated cost. This accommodation is currently available to reporting companies pursuant to amendments recently adopted in the FAST Act Modernization Release. Submitting a confidential treatment request requires a filer to prepare a detailed application to the Commission that identifies the particular text for which confidential treatment is sought, a statement of the legal grounds for the exemption, and an explanation of why, based on the facts and circumstances of the particular case, disclosure of the information is unnecessary for the protection of investors. If the Commission staff issues comments on the application, the filer might need to revise and resubmit the application. These requirements impose direct compliance costs on filers, for instance, in the form of legal counsel costs. For filers not willing or not able to incur such costs, inclusion of confidential information of proprietary value in a material contract or similar exhibit that is filed publicly can result in significant indirect costs due to the disclosure of sensitive information to potential

[398] This estimate is based on the analysis of Form D data for initial Form D filings during 2018 by issuers other than pooled investment funds and reporting issuers. Reporting issuers are identified based on 2018 filings of annual reports or amendments to them.

competitors. While under the proposed amendments, filers would still need to determine whether information they are redacting is material, they would not need to follow the confidential treatment application process.

Based on EDGAR filings analysis, we have identified 11 issuers in qualified Regulation A offerings that have also filed confidential treatment applications as of December 2019. We lack data to determine how many of those filers had filed confidential treatment applications with regard to information that could be redacted under the proposed amendments. In general, more than 90 percent of the confidential treatment requests granted by the Commission in fiscal year 2018 were made in reliance on the exemption concerning competitive harm. It is also difficult to gauge how many filers had proprietary information in material contracts or similar exhibits but opted not to file a confidential treatment request due to legal and other costs of preparing such a request. One commenter on the FAST Act Modernization rulemaking estimated that legal fees for confidential treatment requests ranged from $35,000 to over $200,000,[399] while another commenter estimated that attorneys and paralegals at the company spend an average of 80 hours each quarter preparing redacted exhibits and related confidential treatment requests.[400] According to another commenter, the cost savings of streamlining the confidential treatment process are expected to be relatively more impactful for smaller filers because such companies have a lower threshold for determining whether a contract is material and therefore required to be filed publicly, as well as for companies in industries that are associated with more confidential treatment requests, such as biotechnology.[401] We generally expect similar cost savings from extending this accommodation to Regulation A issuers.

Similarly, the proposed amendments extending to Regulation A issuers the option of incorporation by reference of previously filed financial statement information into the offering statement, consistent with the current rules applicable to registered securities offerings filed on Form S–1, are expected to incrementally reduce Form 1–A preparation costs.

The proposed amendments that would enable automated dissemination of draft offering statements in lieu of the existing exhibit filing requirement, consistent with the process of dissemination of draft registration statements, are expected to incrementally reduce filer effort to prepare the offering statement and promote greater efficiency of the filing process and regulatory harmonization.

Similarly, the proposed amendments that would permit the Commission to declare an offering statement, or a post-qualification amendment to such offering statement, abandoned, consistent with the rule applicable to registered offerings, are expected to promote greater regulatory harmonization and to incrementally promote efficiency of the filing process in cases where only a post-qualification amendment, rather than the entire offering, is abandoned. The proposed amendments are expected to benefit investors by reducing potential investor confusion arising from the presence of the unqualified post-qualification amendment on EDGAR.

Costs

The extension of the option to redact confidential information from material contracts filed as exhibits to Regulation A filings is not expected to result in a significant loss of information to investors because of the condition that any information being omitted not be material. Filers electing to rely on this accommodation would still need to incur costs to determine that information meets the standard for redaction, as they do today when they file a confidential treatment request, but they would not incur the cost of preparing a confidential treatment application.[402] One potential cost of the proposed amendments to Regulation A investors is that information might be redacted by filers that would not otherwise be afforded confidential treatment by the staff. However, based on previous experience and a review of confidential treatment applications by reporting companies, we believe that such instances would be rare.[403]

The proposed amendment to allow Regulation A issuers to rely on incorporation by reference of financial statement information from previously filed periodic reports could marginally increase search time for potential investors. Instead of having all the information available in one location, investors may need to separately access the incorporated reports in order to price the offered security. However, the inclusion of hyperlinks should facilitate the retrieval of such information by investors. As a result, any increase in the costs to investors of assembling and assimilating necessary information is expected to be minimal. We do not have data to assess if, and to what extent, the Form 1–A revision would be burdensome to investors.

Effects on Efficiency, Competition, and Capital Formation

The proposed amendments extending certain disclosure accommodations presently available to reporting companies to Regulation A issuers are expected to have an incremental beneficial effect on capital formation under Regulation A by reducing disclosure and compliance costs required to undertake a Regulation A offering. If lower compliance costs encourage new issuers, particularly smaller issuers with less compliance experience that might not have otherwise been able to access external financing, to raise capital under Regulation A, the proposed amendments might, on the margin, have a favorable effect on competition. Compliance cost savings might have relatively greater benefits for smaller issuers to the extent that compliance costs involved in the preparation of disclosures being omitted or subject to forward incorporation include a fixed component.

To the extent that the proposed amendments might marginally reduce the amount of information available to investors such that the ability to make informed investment decisions is affected for the typical investor, the proposed amendments might result in less efficient capital allocation and, for Regulation A securities with a secondary market (*e.g.,* OTC-quoted Regulation A securities), less informationally efficient security prices in the secondary market.

Reasonable Alternatives

The proposed amendments would permit Regulation A issuers to incorporate previously filed financial statements by reference.

[399] *See* FAST Act Modernization Release, at note 341.

[400] *See* FAST Act Modernization Release, at note 342. Under the proposed amendments, filers would still need to prepare redacted exhibits and in some cases filers would incur costs to respond to a staff request to demonstrate that redacted information was not material.

[401] *See* FAST Act Modernization Release, at note 343 and accompanying text.

[402] Filers may be asked by the Commission staff to provide on a supplemental basis an unredacted copy of the exhibit and provide an analysis of why the redacted information is not material and would likely cause it competitive harm if publicly disclosed, which might result in additional costs.

[403] *See* FAST Act Modernization Release, at Section VI.D.2.

As an alternative, we could also permit forward incorporation by reference on Form 1–A with the same conditions as the ones for forward incorporation by reference available to smaller reporting companies on Form S–1. Forward incorporation by reference allows an issuer to automatically incorporate by reference periodic and current reports filed subsequent to the qualification of the registration statement. This would result in compliance cost savings for Regulation A issuers and allow for greater regulatory harmonization and more uniformity in disclosure requirements applicable to different categories of offerings by small issuers. Forward incorporation by reference would eliminate the need for Regulation A issuers to update information in a qualified Form 1–A filing that has become stale or is incomplete and file post-qualification amendments solely related to updating information from periodic reports, thereby reducing compliance costs.[404] By avoiding the need to file certain post-qualification amendments, under this alternative Regulation A issuers might be able to move more quickly and at a lower cost to raise capital when favorable market conditions occur. Forward incorporation by reference, however, could increase investor search costs and eliminate the benefit of staff review of post-qualification amendments. Because issuers with a relatively higher level of information risk—for instance, issuers not current in their reports, blank check companies, shell companies (other than business combination related shell companies), and penny stock issuers, as well as issuers whose reports are not available on a website maintained by or for the issuer—would be ineligible for forward incorporation under this alternative, the increase in investor information gathering costs under this alternative might be small.

The proposed disclosure simplification amendments would apply to all Regulation A issuers. As an alternative, we could propose to extend the provisions only to Regulation A issuers that are reporting companies. This alternative would be generally consistent with the treatment of reporting companies in registered offerings. It would decrease the potential for loss of information available to Regulation A investors about material contracts and similar agreements and marginally reduce their costs of retrieving financial statement information from previously filed periodic reports that are incorporated by reference for issuers other than reporting companies. However, this alternative also would decrease the benefits of the rule, compared to the proposal.[405]

Request for Comment

104. Would Regulation A issuers benefit from the proposed option to redact certain information from material contracts and similar agreements? What would be the costs to investors and other market participants, if any?

105. Would Regulation A issuers benefit from the proposed option to incorporate previously filed financial statements by reference? What would be the costs to investors and other market participants, if any?

106. What would be the costs and benefits of the alternative of allowing Regulation A issuers to rely on forward incorporation by reference, subject to the conditions imposed on SRC issuers that rely on forward incorporation by reference in Form S–1?

5. Offering and Investment Limits

a. Offering Limits Under Regulation A, Regulation Crowdfunding, and Rule 504

The proposed amendments would raise the 12-month offering limit for Regulation Crowdfunding, presently set at $1.07 million, to $5 million; the 12-month offering limit for Regulation A Tier 2, presently set at $50 million, to $75 million, with the associated revision of the 12-month offering limit for sales by existing affiliate security holders from $15 million to $22.5 million; and the 12-month offering limit for Rule 504, presently set at $5 million, to $10 million.

We can gain some insight into the likely capital formation benefits of a higher offering limit from repeat issuers that have raised multiple rounds of financing under the capped offering exemptions. Some of those issuers might have had to raise financing over multiple years because of the existing offering limits. Table 15 examines total proceeds per issuer reported raised during 2016–2019.

TABLE 15—CAPITAL RAISING DURING 2016–2019 BY REPEAT ISSUERS USING OFFERING EXEMPTIONS PROPOSED TO BE AMENDED

Number of Regulation A issuers that raised at least $50 million	14.
Average (median) amount reported raised	$13.4 million ($5.0 million).
Number of Rule 504 issuers other than pooled investment funds that raised at least $5 million	7.
Average (median) amount reported raised	$384,200 ($100,000).
Number of Regulation Crowdfunding issuers that raised at least $1.0 million ($1.07 million)	51 (27).
Average (median) amount reported raised	$213,678 ($106,900).

Some of the existing issuers under the exemptions proposed to be amended have conducted other types of offerings that are not subject to offering limits. Information about offering sizes in Rule 506 can provide additional insights for the review of the offering limits for Regulation A, Regulation Crowdfunding, and Rule 504.[406] Generally, however, we do not know whether those issuers used Rule 506 because the offering limits of the exemptions proposed to be amended were too low for their needs or because other types of offerings were optimal for their capital raising strategy for other reasons. Table 16 shows the capital raising under Rule 506 in 2019 by

[404] We lack data for a reliable estimate of the number of affected issuers because it is difficult to determine which of the post-qualification filings solely update information from periodic reports versus other information, such as offering price, amount sought, offering deadline, as well as financial information. Based on the analysis of EDGAR filings from June 2015 through December 2019, we estimate that the average (median) issuer in a qualified Regulation A offering has filed 1.7 (0) post-qualification amendments.

[405] The change to permit Exchange Act registrants to use Regulation A was adopted in December 2018 and approximately 17 Exchange Act registrants sought to use Regulation A to conduct an offering in 2019, of which 11 of those offerings were qualified.

[406] We focus on Rule 506 offerings due to data limitations. First, reporting companies are ineligible under Rule 504. Additionally, we have identified only one Regulation Crowdfunding issuer that has undertaken a registered offering as of December 31, 2019. Finally, very few Regulation A issuers have undertaken a registered offering during this period, resulting in a lack of reliable data on such issuers' registered offering proceeds. From June 19, 2015 through December 31, 2019, we have identified 14 issuers in qualified Regulation A offerings that had a registration statement declared effective, based on the analysis of EDGAR filings. These were issuers that proceeded to list on an exchange after their Regulation A offering and then sought follow-on financing through a registered offering.

issuers using offering exemptions proposed to be amended.[407]

TABLE 16—CAPITAL RAISING UNDER RULE 506 IN 2019 BY ISSUERS USING OFFERING EXEMPTIONS PROPOSED TO BE AMENDED

Number of Regulation A issuers raising under Rule 506	34.
Average (median) amount reported raised under Rule 506 per issuer	$5.8 million ($0.2 million).
Number of Rule 504 issuers raising under Rule 506	110.
Average (median) amount reported raised under Rule 506 per issuer	$1.4 million ($0.3 million).
Number of Regulation Crowdfunding issuers raising financing under Rule 506	139.
Average (median) amount reported raised under Rule 506 per issuer	$2.4 million ($0.2 million).

Evidence in Tables 15 and 16 suggests that most issuers that rely on Regulation A, Regulation Crowdfunding, and Rule 504 tend to raise amounts of financing, both under these exemptions and when they raise financing under Rule 506, which has no offering limit, that are below the existing offering limits. As an important caveat, this inference is based on the pool of issuers attracted to these offering exemptions with the provisions that are in place today. It is likely that issuers with larger financing needs would forgo the exemptions with offering limits that are too low for their financing needs. Expanding the offering limits as proposed thus might attract additional issuers to these exemptions.

It is difficult to predict how many new issuers would be drawn to Regulation Crowdfunding, Regulation A, and Rule 504 under the proposed offering limits. Because of potential unobservable differences in issuer characteristics, comparisons presented below are intended purely as illustrative examples and not as estimates of the amounts that would be raised under Regulation A, Regulation Crowdfunding, and Rule 504 if the offering limits are amended as proposed. Table 17 [408] examines the use of other securities offering methods by issuers that raised amounts above the existing limits but below the proposed offering limit thresholds, some of which might consider the amended exemptions. We consider (1) Rule 506 and registered offerings for purposes of analyzing alternative offering limit thresholds under Regulation A; (2) Regulation A, Rule 504, and Rule 506 offerings for purposes of analyzing alternative offering limit thresholds under Regulation Crowdfunding; and (3) Regulation A and Rule 506 offerings for purposes of analyzing alternative offer limit thresholds under Rule 504. For low offering limit thresholds, we do not consider registered offering activity as registered offerings are not likely to be a cost-effective alternative for such issuers. Information on amounts raised under Section 4(a)(2), Section 3(a)(11), and Rules 147/147A is not available to us.

TABLE 17—EVALUATION OF PROPOSED AMENDMENTS TO OFFERING LIMITS BASED ON EVIDENCE FROM SELECT OTHER SECURITIES OFFERING METHODS IN 2019

Regulation A: Proposed offering limit increase from $50 million to $75 million	
Number of issuers in offerings that raised above $50 million and up to $75 million:	
Rule 506 [a]	171
Registered offerings [b]	57
Rule 504: Proposed offering limit increase from $5 million to $10 million	
Number of issuers in offerings that raised above $5 million and up to $10 million:	
Regulation A [c]	10
Rule 506 [d]	1,618
Regulation Crowdfunding: Proposed offering limit increase from $1.07 million to $5 million	
Number of issuers in offerings that raised above $1.07 million and up to $5 million:	
Regulation A [e]	13
Rule 504 [f]	55
Rule 506 [g]	4,004

[a] Regulation A eligibility criteria exclude investment companies and blank checks and limit the exemption to U.S. and Canadian issuers, so for comparability pooled investment funds and issuers outside the U.S. and Canada are excluded from the Rule 506 proceeds used in this estimate. Reporting companies are eligible to rely on Regulation A under the 2018 amendments.

[b] Registered offering proceeds are based on gross proceeds reported in SDC Platinum for U.S. public offerings of equity, debt, and convertible securities with issue dates in 2019, excluding withdrawn, postponed, and rumored offerings, asset-backed securities offerings, blank check issuers, investment fund issuers, and issuers outside the U.S. and Canada.

[c] For purposes of this table, only incremental Regulation A proceeds reported in 2019 are considered, as opposed to cumulative proceeds reported from June 2015 through the end of the period. Rule 504 eligibility criteria exclude Exchange Act reporting companies, so for comparability reporting companies are excluded from the Regulation A proceeds used in this estimate.

[407] For purposes of this table, Regulation A issuers are defined as issuers in qualified Regulation A offerings from June 2015 through December 2019; Rule 504 issuers are defined as issuers in new and amended Rule 504 offerings from 2016 through 2019; Regulation Crowdfunding issuers are issuers in Regulation Crowdfunding offerings from May 2016 through December 2019. Data on Rule 506 financing is based on total proceeds reported raised per issuer in new and amended Form D filings from 2019. Pooled investment funds are excluded.

[408] For purposes of this table, Regulation A issuers are defined as issuers in qualified Regulation A offerings from June 2015 through December 2019; Rule 504 issuers are defined as issuers in new and amended Rule 504 offerings from 2016 through 2019; Regulation Crowdfunding issuers are issuers in Regulation Crowdfunding offerings from May 2016 through December 2019. Data on Rule 506 financing is based on total proceeds reported raised per issuer in new and amended Form D filings from 2019. Pooled investment funds are excluded.

[d] Rule 504 eligibility criteria exclude Exchange Act reporting companies, so for comparability we exclude reporting companies from Rule 506 proceeds used in this estimate. Reporting companies are identified based on annual reports or amendments to them filed in 2019. For comparability with other analyses, although pooled investment funds are eligible to rely on Rule 504, we focus on operating companies and exclude pooled investment funds.

[e] For purposes of this table, only incremental Regulation A proceeds reported in 2019 are considered, as opposed to cumulative proceeds reported from June 2015 through December 2019. Regulation Crowdfunding eligibility criteria limit the exemption to U.S. issuers and exclude Exchange Act reporting companies, so for comparability non-U.S. issuers and reporting companies are excluded from the Regulation A proceeds used in this estimate.

[f] Regulation Crowdfunding eligibility criteria exclude investment companies and Exchange Act reporting companies and limit the exemption to U.S. issuers, so for comparability pooled investment funds and non-U.S. issuers are excluded from Rule 504 proceeds used in this estimate. Reporting companies are ineligible under Rule 504.

[g] Regulation Crowdfunding eligibility criteria exclude investment companies and Exchange Act reporting companies and limit the exemption to U.S. issuers, so for comparability pooled investment funds, reporting companies, and non-U.S. issuers are excluded from Rule 506 proceeds used in this estimate. Reporting companies are identified based on annual reports or amendments to them filed in 2019.

Evidence from Table 17 indicates that most of the Rule 506 activity by the types of issuers that would be eligible to take advantage of the proposed offering limits was concentrated at lower offering limit thresholds. Although there are relatively few Rule 506 or registered offerings in the $50 million to $75 million range, those numbers were comparable with the relatively modest absolute numbers of Regulation A offerings and thus might suggest potential for a significant percentage jump in Regulation A activity under the proposed offering limit. As a crucial caveat, issuers choosing to rely on Rule 506 or registered offerings today might be inherently different from the types of issuers that might find Regulation A attractive under the proposed offering limit. Importantly, we recognize that historical use of other offering methods may not fully represent potential future use of the exemptions being amended, particularly if the amended rules facilitate offerings by issuers that might not currently rely on securities offerings. We lack data or a methodology that would allow us to predict how many new issuers that would not have otherwise undertaken any securities offering would be drawn to Regulation Crowdfunding, Regulation A, and Rule 504 under the proposed offering limits. Finally, the economic effects of the proposed amendments are expected to be limited in cases of issuers seeking and raising amounts of financing below existing, or amended, offering limits.

Benefits

The proposed amendments to raise Regulation A Tier 2, Regulation Crowdfunding, and Rule 504 offering limits might increase the potential for capital formation in those markets by enabling existing issuers that are approaching offering limits to raise larger amounts of financing, as well as by drawing new issuers that may be deterred by relatively low offering limits today. The benefits under the proposed approach are expected to be partly attenuated to the extent that some issuers drawn to the amended exemptions might be switching from other securities offering methods; however, such issuers might still be able to optimize their financing strategy and lower their cost of capital.

Amendments that increase the offering limits of Regulation A Tier 2, Regulation Crowdfunding, and Rule 504 also might improve the composition of the pool of issuers relying on these exemptions. The amended exemptions could draw a larger and more diversified set of issuers with high growth potential that may require financing in excess of the existing limits. Today such startups might forgo an exemption with an offering limit in favor of a Rule 506 offering, which does not cap the offer amount. A broader and more diversified range of investment opportunities might benefit investors in these market segments, particularly non-accredited investors that seek exposure to private companies but are constrained from participation in private placements. The amended offering limits also might make the exemptions more attractive to a broader range of intermediaries. Some intermediaries might be deterred from participating in these markets today by fixed costs (*e.g.,* due diligence, compliance, crowdfunding platform operation, etc.) in proportion to potential transaction-based compensation.

Costs

The proposed amendments to raise Regulation A Tier 2, Regulation Crowdfunding, and Rule 504 offering limits might increase aggregate potential investor losses in those offerings. Amendments that increase the offering limits of Regulation A Tier 2, Regulation Crowdfunding, and Rule 504 could make the exemptions more attractive to issuers that are unable to meet more restrictive requirements applicable to larger offerings today, resulting in higher-risk issuers potentially being overrepresented among the issuers relying on the amended exemptions. For example, some issuers seeking up to $5 million that are unable to meet state or Commission qualification requirements under Regulation A would instead be able to offer $5 million, rather than only $1.07 million, under Regulation Crowdfunding, which does not require state or Commission review prior to sales.[409] As another example, some issuers seeking up to $75 million in an offering and also seeking to avoid the more extensive periodic reporting, beneficial ownership reporting, proxy disclosure, and Regulation FD requirements associated with being a public reporting company would be able to forgo registration and offer up to $75 million, rather than $50 million, under Regulation A. Issuers seeking up to $75 million and also seeking to avoid restrictions on test-the-waters communications with individual investors and unlisted companies seeking to avoid blue sky restrictions on primary offers and sales might also find Regulation A Tier 2 to be relatively more attractive than a registered offering under the proposed amendments. These investor costs are expected to be partly mitigated by the investor protection provisions of each exemption, as well as by the continued application of the anti-fraud provisions of federal and state securities laws and the role of reputational incentives of issuers and, if applicable, intermediaries, in these offerings.

Effects on Efficiency, Competition, and Capital Formation

The proposed amendments to the Regulation Crowdfunding, Regulation A, and Rule 504 offering limits are expected to increase capital formation in those markets and to provide issuers that cannot meet their financing needs under existing exemptions with a means of raising external financing and potentially lowering their cost of capital (*e.g.,* as a result of economies of scale and fixed cost of initiating an offering), resulting in more efficient allocation of

[409] *See also, e.g.,* Mercer Bullard (2019) Crowdfunding's Culture of Noncompliance: An Empirical Analysis, 24 Lewis & Clark L. Rev. (forthcoming).

capital to growth opportunities. The capital formation effects of the proposed amendments are expected to be partly attenuated if issuers raise amounts of financing below amended offering limits or if some of the capital raised under the amended exemptions would have been otherwise raised through other securities offering methods, such as Rule 506. As another example, raising the Regulation Crowdfunding offering limit might draw some of the issuers that would have otherwise sought between $1.07 and $5 million under Rule 504 or Regulation A. As a further example, raising the Rule 504 offering limit might draw some issuers that would have otherwise used Regulation A to raise up to $10 million in a regional offering.

As discussed above, these amendments might enable some issuers to delay or forgo a registered offering, thereby avoiding the associated costs of Exchange Act registration and being a public reporting company. For example, the higher offering limits for the three discussed exemptions, combined with the proposed amendments expanding the integration safe harbors, might allow a broader range of issuers to raise capital from non-accredited investors to meet their financing needs without registration. As a result some of these non-accredited investors might receive less disclosure and face lower liquidity of their holdings. However, this possibility must be weighed against the baseline conditions in which those issuers might have relied on Rule 506, which significantly limits non-accredited investor access and, for non-accredited investors that invest, restricts resales and limits the ability to obtain current information about the issuer. Under the baseline, those same issuers on the margin between a Regulation A and a registered offering might have alternatively registered their securities but not listed on an exchange in a traditional public offering (due to cost, small size, lack of underwriter or institutional investor interest, etc.). As a result, their securities would have no secondary market or be quoted over-the-counter, which would afford only marginal benefits, if any, of liquidity and information availability compared to, for instance, a Regulation A Tier 2 offering.

If the amended offering limits draw additional issuers to these exemptions, which accept an unlimited number of non-accredited investors, the proposed amendments could expand the set and nature of investable opportunities for non-accredited investors seeking exposure to companies that have not yet registered an offering. Depending on how the additional investor capital drawn to the affected markets compares to the amount of additional financing sought by issuers in these markets under the amendments, the amendments might affect competition among issuers for investor capital. By promoting access to external financing for smaller issuers, the proposed amendments might increase product market competition among small issuers and between small issuers and more established industry firms.

Reasonable Alternatives

We are proposing to raise the 12-month offering limits for Regulation A from $50 million to $75 million; for Rule 504, from $5 million to $10 million; and for Regulation Crowdfunding, from $1.07 million to $5 million. As an alternative, we could have proposed different offering limits. For example, we could have proposed smaller increases in the offering limits, such as an adjustment to the existing offering limits to reflect the rate of inflation since the enactment of the JOBS Act in April 2012.[410] As another alternative, we could have proposed larger increases in the offering limits.[411] Compared to the proposed amendments, a higher (lower) offering limit could make an offering under the exemption more (less) cost-effective for issuers (and if applicable, intermediaries) facing fixed offering and due diligence costs, resulting in larger (smaller) capital formation benefits. Compared to the proposed amendments, a higher (lower) offering limit could draw a larger (smaller) pool of additional issuers to the respective segment of the exempt market and potentially expand investment opportunities for non-accredited investors seeking exposure to issuers that have not yet registered their securities. The net impacts of these alternatives on capital formation, investor protection, and competition could be limited if most of the incremental offering activity under these alternatives is due to issuers switching between various offering methods. Even if most of the additional issuers under these alternatives would have otherwise raised financing through another offering method, such issuers might still be able to benefit from a lower cost of capital under the alternative of increased offering limits. The net impacts of the alternative would be further attenuated to the extent that the majority of issuers continue to raise amounts below the offering limits.[412] As a caveat, similar to the discussion above, existing data on issuers approaching the offering limits may not be representative of the amounts that would be raised if a different pool of issuers or investors is drawn to the respective market segment under alternative offering limits.

It is difficult to predict how many new issuers that would not have otherwise engaged in a securities offering would be drawn to the respective exempt market segment under these alternatives, compared to the proposed offering limits. Table 18 below examines the use of alternative securities offering methods that are most likely to be relied upon by issuers that raise amounts above existing offering limits but below several alternative offering limit thresholds to illustrate the potential number of additional issuers that presently utilize other offering methods that do not have a cap but that might see the amended exemption as an option under these alternatives. The caveats and footnotes that accompany Table 17 continue to apply.

[410] The Regulation A offering limit has not been adjusted for inflation since the enactment of the JOBS Act. Between April 2012, when the JOBS Act was enacted, and December 2019, the rate of CPI inflation was 11.7 percent according to BLS data. Adjusting for inflation would yield a Regulation A limit of $55.845 million ($50 million × 1.1169).

The Regulation Crowdfunding offering limit was last adjusted for inflation in April 2017. Between April 2017 and December 2019, the rate of CPI inflation was 5.09 percent, according to BLS data. Adjusting for inflation would yield a Regulation Crowdfunding offering limit of $1.124 million ($1.07 million × 1.0509).

The Rule 504 offering limit was raised to $5 million in October 2016. Between October 2016 and December 2019, the rate of CPI inflation was 6.31 percent. Adjusting for inflation would yield a Rule 504 offering limit of $5.316 million ($5 million × 1.0631).

[411] For instance, some commenters have suggested raising the Regulation A offering limit to $100 million. *See, e.g.,* Goodwin Letter (recommending a $100 million limit); and CrowdCheck Letter (noting that life sciences companies would benefit from a $100 million limit).

[412] For example, the average (median) Regulation Crowdfunding offering reported proceeds of $213,678 ($106,900) between the inception of Regulation Crowdfunding (May 16, 2016) through December 31, 2019; the average (median) Regulation A issuer reported raising $13.4 million ($5.0 million) between the effective date of 2015 Regulation A amendments (June 19, 2015) and December 31, 2019; the average (median) Rule 504 issuer (excluding pooled investment funds) reported raising a total of $386,162 ($100,000) across Rule 504 offerings in 2016 through 2019.

TABLE 18—EVALUATION OF ALTERNATIVES TO THE PROPOSED OFFERING LIMITS USING EVIDENCE FROM CAPITAL RAISING IN 2019 THROUGH SELECT OTHER SECURITIES OFFERING METHODS

Evaluation of alternative Regulation A offering limits

Number of issuers that raised above $50 million and up to:	Number of issuers in offerings under Rule 506 [a]	Number of issuers in registered offerings [b]
$55.845 million (inflation adjustment)	51	17
$60 million	85	29
$70 million	144	46
$75 million (proposed offering limit)	171	57
$80 million	198	72
$90 million	231	90
$100 million	270	122
$110 million	298	143
$120 million	315	151
$125 million	325	162

Evaluation of alternative Rule 504 offering limits

Number of issuers that raised above $5 million and up to:	Number of issuers in offerings under Rule 506 [f]	Number of issuers in offerings under Regulation A [g]
$5.316 million (inflation adjustment)	152	0
$6 million	464	2
$7 million	834	4
$8 million	1,166	7
$9 million	1,377	8
$10 million (proposed offering limit)	1,618	10
$15 million	2,315	16
$20 million	2,695	18
$25 million	2,974	19

Evaluation of alternative Regulation Crowdfunding offering limits

Number of issuers that raised above $1.07 million and up to:	Number of issuers in offerings under Rule 504 [e]	Number of issuers in offerings under Rule 506 [f]	Number of issuers in offerings under Regulation A [g]
$1.124 million (inflation adjustment)	2	104	0
$2 million	31	1,542	2
$3 million	44	2,662	7
$4 million	51	3,388	10
$5 million (proposed offering limit)	55	4,004	13
$6 million	....	4,454	15
$7 million	....	4,813	17
$8 million	....	5,127	20
$9 million	....	5,333	21
$10 million	....	5,567	23
$15 million	....	6,233	29
$20 million	....	6,604	31

[a] Regulation A eligibility criteria exclude investment companies and blank checks and limit the exemption to U.S. and Canadian issuers, so for comparability pooled investment funds and issuers outside the U.S. and Canada are excluded from the Rule 506 proceeds used in this estimate. Reporting companies are eligible to rely on Regulation A under the 2018 amendments.

[b] Registered offering proceeds are based on gross proceeds reported in SDC Platinum for U.S. public offerings of equity, debt, and convertible securities with issue dates in 2019, excluding withdrawn, postponed, and rumored offerings, asset-backed securities offerings, blank check issuers, investment fund issuers, and issuers outside the U.S. and Canada.

[c] For purposes of this table, only incremental Regulation A proceeds reported in 2019 are considered, as opposed to cumulative proceeds reported from June 2015 through the end of the period. Rule 504 eligibility criteria exclude Exchange Act reporting companies, so for comparability reporting companies are excluded from the Regulation A proceeds used in this estimate.

[d] Rule 504 eligibility criteria exclude Exchange Act reporting companies, so for comparability we exclude reporting companies from Rule 506 proceeds used in this estimate. Reporting companies are identified based on annual reports or amendments to them filed in 2019. For comparability with other analyses, although pooled investment funds are eligible to rely on Rule 504, we focus on operating companies and exclude pooled investment funds.

[e] For purposes of this table, only incremental Regulation A proceeds reported in 2019 are considered, as opposed to cumulative proceeds reported from June 2015 through December 2019. Regulation Crowdfunding eligibility criteria limit the exemption to U.S. issuers and exclude Exchange Act reporting companies, so for comparability non-U.S. issuers and reporting companies are excluded from the Regulation A proceeds used in this estimate.

[f] Regulation Crowdfunding eligibility criteria exclude investment companies and Exchange Act reporting companies and limit the exemption to U.S. issuers, so for comparability pooled investment funds and non-U.S. issuers are excluded from Rule 504 proceeds used in this estimate. Reporting companies are ineligible under Rule 504.

[g] Regulation Crowdfunding eligibility criteria exclude investment companies and Exchange Act reporting companies and limit the exemption to U.S. issuers, so for comparability pooled investment funds, reporting companies, and non-U.S. issuers are excluded from Rule 506 proceeds used in this estimate. Reporting companies are identified based on annual reports or amendments to them filed in 2019.

After considering these alternatives, we believe that the proposed offering limits are most likely to provide meaningful capital formation benefits and increased access to investment opportunities to investors while representing a balanced approach to expansion of the respective offering exemptions.

We are proposing to amend the Regulation A Tier 2 offering limit but not the Tier 1 offering limit. As an alternative, we could amend the Tier 1 offering limit. For example, we could raise the Tier 1 offering limit proportionately to the proposed increase in the Tier 2 offering limit, by 50 percent, from $20 million to $30 million. The economic effects of this alternative are similar to the ones considered above. A higher (lower) Tier 1 offering limit could draw more (fewer) issuers to Tier 1 of Regulation A. Some of the additional issuers drawn to Tier 1 under this alternative might be switching from Tier 2 or other exempt offering methods, which might limit the net impact on capital formation.[413] Even in that case, some issuers switching from Tier 2 or other offering methods might be able to decrease their cost of capital.

We are proposing to raise the Rule 504 offering limit, which further increases potential redundancies between Regulation A Tier 1 and Rule 504. As an alternative, we could eliminate one of these two offering exemptions after amending the other one as proposed (*e.g.,* eliminate Rule 504, or eliminate Regulation A Tier 1 and raise the Rule 504 offering limit to $20 million). Such an alternative might contribute to regulatory simplification. However, it also might be disruptive for those issuers that rely upon the exemption eliminated or find it to be cost-effective for their financing strategy (*e.g.,* a lack of Commission review or extensive Commission disclosure requirements in Rule 504 offerings or the higher offering limit of Regulation A Tier 1).

We have proposed to increase the Regulation Crowdfunding offering limit to make the offering process more cost-effective and to promote capital formation under this exemption. However, we have not proposed to amend the Regulation Crowdfunding thresholds for different tiers of financial statement requirements, which govern the required standard of financial statement review, and accordingly, costs. As an alternative, we could raise such thresholds, for instance, in proportion to the proposed increase in the offering limit: $500,000 for reviewed financial statements (in lieu of $107,000); $2.5 million for audited financial statements for follow-on offerings (in lieu of $535,000); and $5 million for audited financial statements for initial offerings (in lieu of $1.07 million).[414] As another alternative, we could waive certain other disclosure requirements (*e.g.,* progress updates and/or annual reports) for the lower tier of crowdfunding offerings (*e.g.,* offerings up to $250,000 or $1 million) to make crowdfunding offerings more cost-effective for the smallest issuers, many of which have not yet begun generating revenue and might not have enough liquid assets or access to loans to cover the compliance costs of a Regulation Crowdfunding offering. Scaling disclosure requirements for Regulation Crowdfunding offerings under these alternatives could attract a larger set of early stage issuers that seek to raise small amounts of capital to Regulation Crowdfunding while providing a degree of independent verification of accounting quality for larger crowdfunding offerings in a more cost-effective manner than with an audit.[415] Scaling disclosure requirements under this alternative, however, would result in information loss to investors, potentially contributing to less well informed investment decisions, greater risk of investment losses, and less efficient allocation of capital. Moreover, this alternative could attract issuers of greater risk to the lower crowdfunding offering tier, which could undermine future capital raising in that market tier.

Request for Comment

107. What are the economic effects of the proposed increases to the offering limits under Regulation A, Regulation Crowdfunding, and Rule 504? What are the likely effects of the proposed changes on issuers, investors, and other market participants? Which categories of issuers are most likely to benefit from the proposed changes? Are the proposed changes likely to change the pool of issuers drawn to these offering exemptions? Are the proposed changes likely to affect intermediaries in these markets?

108. Are the proposed changes to Regulation A, Regulation Crowdfunding, and Rule 504 offering limits likely to promote capital formation? Would the proposed changes improve access to capital for new issuers that are presently unable to access securities markets, or would the proposed changes mainly result in switching of issuers between offering methods? Would the proposed changes be likely to allow issuers to decrease their cost of raising capital under these exemptions?

109. What alternative offering limits should we consider for Regulation A Tier 2, Regulation Crowdfunding, and Rule 504, relative to the proposed limits of $75 million, $5 million, and $10 million, respectively? For example, should we instead consider adjusting those limits for inflation? What would be the economic effects of such a change on issuers, investors, and other market participants?

110. Should we consider the alternative of also amending the Regulation A Tier 1 offering limits? If so, what would be the economic effects of such a change on issuers, investors, and other market participants?

111. Would the offering limits as proposed to be revised introduce redundancies (for instance, between Rule 504 and Regulation A Tier 1)? If so, how should we address those redundancies? For example, should we eliminate any of the existing exemptions to promote greater harmonization? What would be the economic effects of such changes on issuers, investors, and other market participants?

[413] For example, from June 2015 through December 2019, we have identified seven Tier 2 issuers that reported raising between $20 million and $30 million in financing under Regulation A and that could become newly eligible to raise the same amount of financing under Tier 1, if it were amended under this alternative. However, they also might not choose to switch to Tier 1 if they find Tier 2 to be more attractive (*e.g.,* due to preemption of state review or greater confidence and easier path to quotation on the upper tiers of the OTC market in the presence of periodic reports required by Tier 2). For example, from June 2015 through December 2019, we estimate that 112 Tier 2 issuers reported raising up to $20 million in financing under Regulation A even though that amount would have made them eligible to use Tier 1 as well. Further, some issuers might still prefer Tier 2 because it allows issuers to undertake an offering with a higher maximum offering amount, which provides issuers with flexibility to raise more capital without having to undergo a re-qualification (*e.g.,* if market conditions improve) even if the average issuer's proceeds do not reach the amount sought.

[414] *See, e.g.,* Wefunder Letter (recommending a $1 million threshold for reviewed financial statements and a $5 million threshold for audited financial statements).

[415] *See, e.g.,* Brad A. Badertscher et al., *Verification Services and Financial Reporting Quality: Assessing the Potential of Review Procedures* (Simon Bus. Sch., Working Paper No. FR 17–17, July 2018) (''[B]oth reviews and audits yield significantly better reporting quality scores and lower cost of debt than zero-verification compilations. However, model-based reporting quality scores of reviews and audits are indistinguishable statistically, on average. Regarding broader economics, we find that relative to compilations, reviews yield more than half the added interest rate benefit associated with an audit, at considerably less than half the added cost. Overall, our results suggest reviews may provide a cost-effective verification alternative to audits, and the potential of analytical procedures warrants more attention by audit researchers and regulators.'')

112. What would be the costs and benefits of the alternative of scaling up financial statement thresholds in Regulation Crowdfunding in proportion to the proposed change in the offering limit (from $107,000, $535,000, and $1.07 million to $500,000, $2.5 million, and $5 million, respectively)?

113. What would be the costs and benefits of the alternative of waiving certain disclosure requirements (*e.g.,* review and/or audit of financial statements, progress updates, and periodic reports) for issuers in the smallest Regulation Crowdfunding offerings (*e.g.,* up to $1 million)?

b. Investment Limits Under Regulation Crowdfunding

We are proposing to increase Regulation Crowdfunding investment limits.[416] The amended limits would be based on the greater of, rather than the lower of, an investor's annual income or net worth and would only apply to non-accredited investors.

Benefits

The proposed amendments to Regulation Crowdfunding investment limits would increase the amounts that can be invested by a given investor, potentially resulting in greater capital formation or lower aggregate costs of soliciting investors and investor relations. The proposed amendments also would allow some investors, particularly non-accredited investors with a significant disparity between income and net worth and accredited investors, to invest a larger amount in crowdfunding securities. Relaxing such investment restrictions might enable some of those investors to reach more efficient investment allocations in their portfolios as well as realize enhanced upside from investing in successful early stage companies. Given the investment minimums established by the issuer for each offering, some investors might be able to invest in a larger number of crowdfunding issuers, resulting in greater diversification within the crowdfunding category of their portfolio (but not necessarily within the portfolio overall) under the proposed amendments to the investment limits.

Accredited investors in particular are expected to possess the capability to evaluate larger crowdfunding investments and the ability to bear resulting financial risk. Thus, allowing such investors to invest a larger amount in crowdfunding offerings, if desired, might enable them to allocate their capital more efficiently. Allowing accredited investors to invest in crowdfunding issuers without a limitation also might create stronger incentives to perform due diligence and screening before a crowdfunding investment as well as to continue to monitor the issuer's activities after investing, relative to investors that only commit a nominal amount of capital. Under the baseline, accredited investors are not subject to investment limitations in offerings under Regulation A and Regulation D offerings or in private placements. It is therefore possible that some accredited investors would simply reallocate capital between holdings of securities issued under other exemptions, including, in some cases, securities of the same issuer issued under other exemptions (for instance, in cases of side-by-side Regulation Crowdfunding/Rule 506(c) offerings). It is also possible that accredited investors investing large amounts might continue to prefer private placements, even if Regulation Crowdfunding investment limits are amended, because private placements allow accredited investors greater bargaining power to negotiate more favorable terms with issuers. In addition, private placements result in fewer information spillovers than Regulation Crowdfunding offerings (*e.g.,* depending on the platform, small investors may be able to observe large investments, and thus free-ride on large investors' screening and due diligence efforts).

We lack the data to assess how many investors may be affected by the proposed amendments to Regulation Crowdfunding investment limits, in part because investor information generally is not available and is not required to be disclosed in the course of an offering or upon completion of an offering. Based on a subset of data made available by one crowdfunding intermediary,[417] among non-accredited investors with available information on annual income and net worth, revising the investment limits as proposed could increase the investment limit by 98 percent for the median non-accredited investor in that subset. In addition, approximately nine percent of investors in the examined subset of data were accredited and thus would no longer be subject to investment limits under the proposed amendments. The economic effects of the proposed amendments would be mitigated to the extent that investors might invest amounts below the investment limits.[418] We cannot determine whether these results are representative of the distribution of investors on other funding portals or during other time periods, or how that distribution may change under the proposed amendments if new investors are drawn to Regulation Crowdfunding.

Costs

The proposed amendments to Regulation Crowdfunding investment limits may increase the magnitude of investor losses if some investors inefficiently increase portfolio allocations to the crowdfunding category resulting in under-diversification. In particular, relaxing investment limits might enable some less sophisticated investors to make larger investments in crowdfunding securities based on an incomplete assessment of information about those securities, with the resulting potential for increased investor losses. The resulting increased risk of investor losses might be relatively more costly for investors with a decreased ability to bear risk due to their more limited income or net worth. However, other investor protection provisions of Regulation Crowdfunding, such as issuer disclosure requirements and investor education and other intermediary requirements, might partly mitigate these risks to investors.

[416] *See supra* Section II.E.3.

[417] *See* 2019 Regulation Crowdfunding Report, at notes 91–93 and accompanying text. Information on amounts invested by an average investor or the number of investors per offering is not available for the full sample of Regulation Crowdfunding offerings. Information on offerings from one intermediary from May 2016 through September 2018 provides some insight into the typical investment size, investor composition, and number of investors in crowdfunding offerings. For purposes of these estimates, we exclude investments redirected to a Rule 506(c) offering; offerings that were not funded (*i.e.,* were either canceled or ongoing) or had missing data; observations where an investor made but subsequently withdrew the commitments, yielding a cumulative investment of zero; and investor observations with missing accredited investor status.

[418] *See* 2019 Regulation Crowdfunding Report, at 40 (''For most investors with available data on annual income and net worth (approximately 30% of investors in offerings funded on the platform), cumulative amounts invested during the entire considered period (almost 2.5 years) through this intermediary's platform did not reach the investment limit, with fewer than 10% of investors on the platform investing amounts exceeding their 12-month investment limit over the entire 2.5-year period. According to information provided by another intermediary respondent to the look-back survey, the median (average) crowdfunding investment through its platform was $1,335 ($500), with investors making an average of 2.7 investments and approximately 40% of investors making two or more investments. According to information provided by a different intermediary respondent, the average investment was approximately $992, and investors made an average of 1.5 investments. Based on available data, we are unable to determine whether these investors also invested in crowdfunding offerings through other crowdfunding platforms; thus, these estimates are likely to represent a lower bound on average investment amounts.'').

Further, such potential costs of the proposed amendments should be weighed against the baseline, which includes provisions generally allowing non-accredited investors to invest unlimited amounts in listed and unlisted registered securities and in Regulation A Tier 1 securities,[419] as well as up to ten percent of the higher of income or net worth in each offering of Regulation A Tier 2 securities, which also may result in considerable risk to investor portfolios.

The proposed amendments removing investment limits for accredited investors in Regulation Crowdfunding offerings are not expected to result in significant costs to investors given that accredited investors generally have the capacity to fend for themselves and greater ability to withstand financial losses. Because accredited investors are not subject to investment limitations in offerings under Regulation A and in private placements, they may simply reallocate capital between holdings of securities issued under other exemptions. It is also possible that accredited investors investing large amounts might continue to prefer private placements, as discussed above.

Effects on Efficiency, Competition, and Capital Formation

The proposed amendments relaxing Regulation Crowdfunding investment limits might incrementally promote capital formation through Regulation Crowdfunding, particularly for issuers that might be attractive to accredited investors or non-accredited investors who have a greater disparity between income and net worth (*e.g.,* retired investors with high net worth relative to income or young investors with high income relative to savings). The net impacts of the proposed amendments on aggregate capital formation might be limited to the extent that some of the issuers and investors, and some of the financing raised, could be reallocated from other offering methods that either do not have investment limits (*e.g.,* some of the accredited investors in Regulation Crowdfunding offerings under the proposed amendments might be switching from Rule 506 or Regulation A offerings) or that have less stringent investment limits (*e.g.,* some of the non-accredited investors in Regulation Crowdfunding offerings under the proposed amendments might be switching from Regulation A offerings). On the one hand, raising investment limits might allow some investors, particularly accredited investors and more sophisticated non-accredited investors, that were previously constrained by existing investment limits to attain a more efficient portfolio allocation. On the other hand, for some less sophisticated investors, relaxing investment limits might enable an inefficiently high exposure to crowdfunding investments resulting in overall under-diversification in their portfolios.

If the proposed amendments increase the participation of accredited investors in Regulation Crowdfunding offerings, the average intensity of monitoring and screening of issuers by investors might increase as a result, with potential positive spillovers for small investors that lack the expertise and incentives to engage in comparable monitoring and screening. This might lead to greater alignment of valuations in Regulation Crowdfunding offerings with underlying fundamental values and overall greater efficiency of capital allocation in this market.

Depending on how the additional investor capital drawn to Regulation Crowdfunding compares to the amount of additional financing sought by issuers in these markets after the amendments, the amendments might affect competition among issuers for investor capital.

Reasonable Alternatives

We are proposing to revise Regulation Crowdfunding investment limits for non-accredited investors (to be based on the greater of, rather than the lesser of, an investor's net worth or annual income) and to rescind the investment limits for accredited investors, similar to Tier 2 of Regulation A. As an alternative, we could make other changes to Regulation Crowdfunding investment limits to increase the utility of the exemption to issuers and to expand access of non-accredited investors to startup investment opportunities. For example, one alternative would be to align the Regulation Crowdfunding investment limits fully with those of Regulation A Tier 2 (*i.e.,* to define the limit per offering as 10 percent of the greater of net worth or annual income instead of the two-tier 5 percent/10 percent limit for all Regulation Crowdfunding offerings an investor invests during a given twelve-month period). Compared to the proposed amendments, this alternative would expand investment limits, particularly for non-accredited investors with lower income and net worth and for investors that participate in multiple Regulation Crowdfunding offerings, which might potentially increase capital formation benefits relative to the proposed amendments, as well as expand non-accredited investor access to startup investment opportunities. However, this alternative also might result in increased magnitude of investor losses per investor and an inefficient decrease in diversification for some non-accredited investors, compared to the proposal.

As another alternative, we could increase or lower the numerical thresholds in investment limits under Regulation Crowdfunding. For example, we could scale up the $2,200 numerical threshold in the investment limit in proportion to the proposed increase in the offering limit (from $2,200 to $11,000). This alternative would increase (decrease) capital formation benefits while increasing (decreasing) the magnitude of potential investor losses per non-accredited investor, particularly for non-accredited investors with a low income and net worth, compared to the proposal.

Request for Comment

114. What would be the economic effects of the proposed changes to the Regulation Crowdfunding investment limits? Would the proposed changes to remove the limits on accredited investors benefit issuers and investors? Would the proposed changes to use the greater of, rather than the lesser of, standard with respect to a non-accredited investor's net worth or annual income benefit issuers and investors? Are the proposed changes likely to promote capital formation? Would the proposed changes impose costs on issuers, investors, and other market participants?

115. What would be the economic effects of the alternative amendments to Regulation Crowdfunding investment limits, such as adjusting the investment limit thresholds in proportion to the adjustment in the offering limit; using different (lower or higher) numerical thresholds for non-accredited investor investment limits; or aligning non-accredited investor investment limits with those in Regulation A Tier 2? Would such alternatives benefit issuers, investors, and other market participants? Would such alternatives impose costs on issuers, investors, and other market participants? What alternative investment limit amendments should we consider, and what would be the economic effects of those alternatives?

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[419] In contrast to Regulation Crowdfunding securities, sales and offers of unlisted registered securities and Regulation A Tier 1 securities are subject to state registration requirements, including, in some states, merit review.

6. Eligibility Requirements in Regulation Crowdfunding and Regulation A

a. Eligibility of Crowdfunding Vehicles Under Regulation Crowdfunding

The Commission is proposing a new rule under the Investment Company Act that would allow crowdfunding issuers to raise capital through a crowdfunding vehicle. Such crowdfunding vehicles would be formed by or on behalf of the underlying crowdfunding issuer to serve merely as a conduit for investors to invest in the crowdfunding issuer and would not have a separate business purpose. This approach is designed to allow investors in the crowdfunding vehicle to achieve the same economic exposure, voting power, and ability to assert state and federal law rights, and receive the same disclosures under Regulation Crowdfunding, as if they had invested directly in the underlying crowdfunding issuer in an offering made under Regulation Crowdfunding.

Benefits

The proposed rule would benefit issuers by enabling them to maintain a simplified capitalization table after a crowdfunding offering (versus having an unwieldy number of shareholders), which can make issuers more attractive to future VC and angel investors, and by reducing the administrative complexities associated with a large and diffuse shareholder base. Several commenters have indicated that these factors may have contributed to the relatively modest use of the Regulation Crowdfunding exemption since its adoption.[420] A crowdfunding vehicle may constitute a single record holder for purposes of Section 12(g), rather than treating each of the crowdfunding vehicle's investors as record holders as would be the case if they had invested in the crowdfunding issuer directly. An issuer's use of a crowdfunding vehicle therefore could allow crowdfunding issuers to raise capital in certain circumstances without being required to register under Section 12(g).[421]

Some early stage issuers with high growth potential that have a chance of attracting VC funding in the future may avoid conducting an offering under Regulation Crowdfunding due to concerns about their capitalization table. By alleviating these concerns, the proposed rule might encourage additional issuers with high growth potential to consider pursuing an offering under Regulation Crowdfunding. Because these issuers might presently offer securities only to accredited investors or a few non-accredited investors through offerings under Rule 506 or through other private placement offerings, the proposed rule might benefit non-accredited investors by expanding their access to investment opportunities in startups with high growth potential that are early in their lifecycle.

As discussed in Section II.F.1 above, the use of a crowdfunding vehicle would be subject to certain conditions designed to ensure that investors attain the same economic exposure, voting power, and ability to assert state and federal law rights, and receive the same disclosures under Regulation Crowdfunding, as if they had invested directly in the crowdfunding issuer in an offering made under Regulation Crowdfunding, thereby minimizing any potential adverse effects for investors of permitting such an offering structure. The crowdfunding vehicle and the crowdfunding issuer also would be co-issuers in the offering, with the resulting joint liability for offers and sales.

The required transparency and single-purpose nature of the crowdfunding vehicle, combined with the continued application of the substantive and disclosure requirements of Regulation Crowdfunding and the anti-fraud provisions of the federal and state securities laws, are expected to provide significant investor protections for crowdfunding vehicle investors under the proposed rule.

Costs

The use of crowdfunding vehicles could result in additional offering costs. The costs of forming and operating the crowdfunding vehicle would be incurred by the crowdfunding issuer, which could decrease the overall economic benefits of the offering for all shareholders and for investors in the crowdfunding vehicle. However, to the extent that the crowdfunding vehicle could yield benefits for the crowdfunding issuer, including expanded potential for future funding rounds due to reduced capitalization table concerns and greater efficiency of administration of a large and diffuse investor base, these economic benefits of a crowdfunding vehicle could offset the additional costs. The balance of these tradeoffs is likely to vary depending on the issuer's offering experience, potential for raising follow-on financing from a large investor, costs associated with the creation and administration of the crowdfunding vehicle, and the number of small investors participating in the crowdfunding offering. Because the use of the crowdfunding vehicle structure would be voluntary, we expect issuers would use a crowdfunding vehicle only where the issuer determined that the benefits justify the costs.

If the crowdfunding vehicle is administered by an external entity on behalf of the issuer, the associated fees might depend on other business between the external administrator and the issuer. On the one hand, administration fees might be reduced in instances where an issuer obtains a bundle of other services related to the offering from the external administrator or where an administrator seeks future business of the issuer related to other offerings. On the other hand, administration fees might be increased to compensate for discounted fees for other services related to this or other offerings. Several factors are expected to mitigate concerns about administration fees. Competition among external service providers might put downward pressure on such fees. The requirement that crowdfunding vehicle costs be incurred by the crowdfunding issuer rather than the crowdfunding vehicle ensures a degree of alignment of interests of crowdfunding vehicle investors and the crowdfunding issuer with respect to crowdfunding vehicle costs. The highly limited scope of permissible activities of the crowdfunding vehicle, as proposed, would further limit potential discretion related to fees.

As discussed above, the proposed conditions for the use of crowdfunding vehicles are expected to minimize agency conflicts incremental to a

[420] *See* 2017 Treasury Report; 2017 Forum Report; Iownit Letter; Rep. McHenry Letter; Wefunder Letter; AOIP Letter; MainVest Letter; and J. Schocken Letter. *See also* Rep. McHenry Letter (with respect to later financing rounds). The SPV structure has been successfully adopted as an option in crowdfunding offerings in other countries. *See, e.g.,* Robert Wardrop & Tania Ziegler, *A Case of Regulatory Evolution—A Review of the UK Financial Conduct Authority's Approach to Crowdfunding,* CESifo DICE Rep., June 2016, at 23 (referencing the use of SPVs in real-estate crowdfunding in the UK). Today, SPVs are allowed to participate in Rule 506 offerings without limitation.

[421] However, securities issued pursuant to Regulation Crowdfunding are conditionally exempted from the record holder count under Section 12(g) if the following conditions are met: The issuer (i) is current in its ongoing annual reports required pursuant to Regulation Crowdfunding; (ii) has total assets as of the end of its last fiscal year of $25 million or less; and (iii) has engaged the services of a transfer agent registered with the Commission. Thus, the concern about exceeding the Section 12(g) thresholds would be most pronounced for Regulation Crowdfunding issuers whose assets, including funds raised in the offering, might exceed $25 million.

crowdfunding vehicle.[422] The crowdfunding vehicle structure is not expected to significantly affect information processing costs for investors, compared to a direct crowdfunding offering, because of the transparency and single-purpose nature of the crowdfunding vehicle, as well as the provisions designed to ensure that crowdfunding vehicle investors receive the same disclosures under Regulation Crowdfunding, as if they had invested directly in the crowdfunding issuer.

Effects on Efficiency, Competition, and Capital Formation

The proposed rule is expected to enhance capital formation by making Regulation Crowdfunding more attractive to issuers. If the incremental financing is largely due to issuers switching from other securities offering methods to Regulation Crowdfunding, the net impact of the proposed amendments on the aggregate amount of capital formation might be minimal. However, the proposed amendments might affect the cost of capital. By giving crowdfunding issuers the flexibility to conduct a crowdfunding offering via a crowdfunding vehicle, the proposed rule might make crowdfunding offerings to individual investors more attractive to a broader range of issuers, enabling such issuers to diversify their financing strategy at an early stage of their operation and in some cases potentially obtain a lower cost of capital or greater amounts of capital than they would otherwise. The amendments might be especially beneficial for crowdfunding businesses with high growth potential by helping them attract institutional investors or other large investors in the future, thus enabling a potentially more efficient financing and growth strategy.

Further, the ability to use a crowdfunding vehicle might expand the investment opportunities available to non-accredited investors and, as a result, potentially affect the efficiency of their capital allocation. If the proposed amendments draw additional issuers that would have otherwise considered only private placements to Regulation Crowdfunding, broader access to those investment opportunities could enable non-accredited investors to allocate their capital more efficiently.

The proposed amendments might promote competition. By making Regulation Crowdfunding attractive to a broader subset of small issuers, the proposed amendments are expected to incrementally broaden access to funding for small and early stage issuers, many of which have not participated in other securities offerings and are otherwise highly financially constrained. Expanding access to capital for small and early stage issuers might, on the margin, encourage new entry and promote competition between small issuers and more established industry competitors. The aggregate effects of the proposed amendments on competition among prospective issuers for investor capital are difficult to predict and would depend on the relative effects of the proposed amendments on issuer and investor willingness to participate in Regulation Crowdfunding offerings.

Reasonable Alternatives

As an alternative, we could require that a registered investment adviser manage the crowdfunding vehicle, as suggested by some commenters and the 2017 Treasury Report.[423] Under this alternative, investors in crowdfunding vehicles could benefit because an investment adviser is a fiduciary subject to the requirements of the Investment Advisers Act and regulations thereunder. The proposed rule's conditions, however, are designed to limit the crowdfunding vehicle's activities to that of acting as a conduit to hold the securities of the crowdfunding issuer without the ability for independent investment decisions to be made on behalf of the crowdfunding vehicle. Any incremental benefits of this alternative to investors therefore could be limited. In addition, given the relatively small amount of capital that can be raised through Regulation Crowdfunding, it may not be economically feasible to require a registered investment adviser to manage the crowdfunding vehicle.

As another alternative, we could allow crowdfunding vehicles but remove some of the requirements in the proposed rule, such as the restrictions on the permissible activities and other provisions intended to provide the investor with the same economic exposure, rights, and disclosures as they would have if they invested in a direct Regulation Crowdfunding offering or the requirement that crowdfunding vehicle costs be borne by the crowdfunding issuer. Removing these restrictions would increase the flexibility for issuers in structuring their crowdfunding offering and potentially make Regulation Crowdfunding more attractive as a capital raising option. However, it also could lead to agency conflicts and weaken investor protections for crowdfunding vehicle investors, compared to the proposed rule's conditions. Some of these additional costs to investors might be partly mitigated by the substantive and disclosure requirements of Regulation Crowdfunding, however, and might be compensated in the form of higher returns.

Similarly, we could modify some of conditions in the proposed rule so that an investor in a crowdfunding vehicle would still achieve the same economic exposure, and receive the same disclosures, as if he or she had invested in the crowdfunding issuer directly, while providing greater flexibility for crowdfunding vehicles and their investors to determine other aspects of the crowdfunding vehicle's operations. For example, rather than requiring a crowdfunding vehicle to vote and participate in tender or exchange offers or similar transactions only in accordance with the instructions it receives from its investors, we could allow a crowdfunding vehicle and its investors to determine these matters. A crowdfunding vehicle, for example, could disclose to its investors at the time of its initial offering that the vehicle will cast all of its votes in accordance with the instructions of a majority of its security holders. Another example would be to permit a crowdfunding vehicle and its investors to determine how the crowdfunding vehicle will exercise any rights under state or federal law, rather than providing each investor the ability to assert those rights as proposed.

These and similar modifications would provide additional flexibility for crowdfunding vehicles and the crowdfunding issuers using the vehicles to raise capital. If this greater flexibility would result in additional offerings under Regulation Crowdfunding, this could provide capital formation benefits to issuers and benefit investors by providing additional investment options. These and similar modifications could, however, result in offering terms that may be less advantageous for investors relative to the proposal. The net benefits and costs to investors would therefore depend on the extent to which a more flexible approach would result in additional Regulation Crowdfunding offerings relative to the proposed rule and the terms of those offerings.

Request for Comment

116. What would be the costs and benefits of extending eligibility under

[422] Small investors in a direct crowdfunding offering might face agency conflicts today. However, we do not expect the proposed amendments would result in significant additional agency conflicts for investors in crowdfunding vehicle offerings.

[423] *See* Iownit Letter; NASAA Letter; and CrowdCheck Letter. *See also* 2017 Treasury Report.

Regulation Crowdfunding to crowdfunding vehicles as proposed?

117. What would be the costs and benefits of the alternative of imposing additional conditions on crowdfunding vehicles? What would be the costs and benefits of the alternative of eliminating or revising some of the proposed conditions?

b. Security Types Eligible Under Regulation Crowdfunding

The proposed amendments would narrow the types of securities eligible under Regulation Crowdfunding to debt securities, equity securities, and debt securities convertible or exchangeable into equity securities, including guarantees of such securities, to harmonize the provisions of Regulation Crowdfunding regarding eligible security types with those of Regulation A. Other types of securities would be excluded from eligibility under the proposed amendments. For example, Simple Agreements for Future Equity (SAFE) securities would no longer be eligible under Regulation Crowdfunding.

Benefits

The proposed amendments limiting the scope of securities eligible under Regulation Crowdfunding are expected to strengthen investor protection in some instances, to the extent that investors in Regulation Crowdfunding offerings may have less sophistication and resources to analyze novel security types with complex payoff structures that may pose significant valuation challenges.[424] Further, by providing greater uniformity in security types available in Regulation Crowdfunding offerings and conforming the types of securities eligible under Regulation Crowdfunding to those presently eligible under Regulation A, the proposed amendments are expected to make it easier for investors to compare securities offered by different issuers under Regulation Crowdfunding, as well as potentially compare securities offered under Regulation Crowdfunding with those offered under Regulation A, facilitating better informed investment decisions. These benefits of the proposed amendments to Regulation Crowdfunding investors might be limited for those investors that already take advantage of the existing disclosures required by Regulation Crowdfunding (including a description of the terms of securities and the valuation method used). Further, the continued application of other Regulation Crowdfunding investor protection provisions (including other offering circular and periodic disclosure requirements, investment limits, investor education, and other crowdfunding intermediary requirements) might reduce the overall benefits of these amendments for investors.

Costs

The proposed amendments limiting the scope of securities eligible under Regulation Crowdfunding might impose costs on issuers. Limiting the flexibility to offer the types of securities that are most compatible with their desired capital structure and financing needs and most advantageous given the issuer's assessment of market conditions might cause such issuers to incur a higher cost of capital or forgo a Regulation Crowdfunding offering. It is difficult to predict what share of issuers that rely on security types, such as SAFEs, that would no longer be eligible under Regulation Crowdfunding would change the security type but continue to rely on Regulation Crowdfunding versus switching to an offering method that does not limit security types (such as Regulation D or a Section 4(a)(2) offering) or forgo a securities offering altogether. Existing data on Regulation Crowdfunding offerings suggests that a significant share of issuers relied on security types other than debt and equity.

We estimate that from inception of Regulation Crowdfunding in May 2016 through December 2019:[425]

- Equity accounted for 46 percent of the number of offerings and 41 percent of the aggregate target amount sought;
- Debt accounted for 31 percent of the number of offerings and 33 percent of the aggregate target amount sought; and
- SAFEs accounted for 21 percent of the number of offerings and 24 percent of the aggregate target amount sought.

The remainder comprised securities not elsewhere classified (*e.g.,* revenue participation agreements and miscellaneous tokens).

However, if some of these issuers previously relied on SAFEs as a means of simplifying their capitalization table, the proposed crowdfunding vehicle provisions might reduce demand for SAFEs and mitigate the incremental impact of the proposed amendments to eligible security types. To the extent that the range of security types permitted under the proposed amendments provides sufficient flexibility to most issuers with respect to selecting debt and equity features and voting and non-voting securities, and to the extent that security payoff structures are priced efficiently by the market, the effects of limiting security types as proposed on issuer cost of financing might be limited.

Some investors might incur costs under the proposed amendments, particularly investors that relied on existing disclosures about the terms of offered securities to accurately value such securities and that found securities with payoff structures other than equity or debt optimal for their investment strategy. Those investors might opt for offerings under other exemptions or might have to adjust their investment strategy to focus on eligible security types.

Effects on Efficiency, Competition, and Capital Formation

Limiting the scope of eligible types of securities is likely to limit capital formation under Regulation Crowdfunding for some issuers that otherwise would undertake the offering of excluded types of securities. If some of these issuers switch to a type of securities permitted under the proposed

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[424] *See* U.S. Securities and Exchange Commission Office of the Investor Advocate, Report on Activities for Fiscal Year 2016, *available at https://www.sec.gov/advocate/reportspubs/annual-reports/sec-investor-advocate-report-on-activities-2016.pdf;* Jamie Ostrow, *Buyer Beware: Securities Are Not Always What They Seem . . . ,* CrowdCheck Blog, Aug. 27, 2018, *available at https://www.crowdcheck.com/blog/buyer-beware-securities-are-not-always-what-they-seem;* and Joseph M. Green & John F. Coyle, *Crowdfunding and the Not-So-Safe SAFE,* 102 Va. L. Rev. 168 (2016). *But see* Jack Wroldsen, *Crowdfunding Investment Contracts,* 11 Va. L. & Bus. Rev. 543 (2017). *See also* U.S. Securities and Exchange Commission, Investor Bulletin: Be Cautious of SAFEs in Crowdfunding, *available at https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_safes.*

See also Andrew Stephenson, *Compliance with Reg CF: When Failure Becomes Fraud,* CrowdCheck Blog, Apr. 23, 2018, *available at https://www.crowdcheck.com/blog/compliance-reg-cf-when-failure-becomes-fraud;* and FINRA, *Be Safe—5 Things You Need to Know About SAFE Securities and Crowdfunding, available at http://www.finra.org/investors/highlights/5-things-you-need-know-about-safe-securities-and-crowdfunding.*

[425] *See supra* note 12. These estimates are based on data from Form C or the latest amendment to it, excluding withdrawn offerings. Equity is comprised of common and preferred equity (including partnership/membership units and interests). Approximately a third of Regulation Crowdfunding offerings were by issuers organized as limited liability companies or as partnerships. Debt is comprised of straight and convertible debt. Analysis of XML data from Form C does not allow a granular breakdown of debt security types. In addition, some of the revenue share agreements remaining in the ''other security type'' category may have quasi-debt features. SAFEs are identified by keyword from ''other security type description.'' Anecdotal review suggests that some equity and debt offerings were denoted as ''other'' in the form. Where detected, such instances were re-classified manually based on the ''other security type description'' field. Examples of ''other'' are, for instance, tokens, simple agreement for future tokens (''SAFTs''), and revenue participation agreements.

amendments, or offer the excluded type of securities using another offering method, such as Regulation D, the net impact of the proposed amendments on the aggregate amount of capital formation might be minimal. However, reducing issuer flexibility with respect to security design in Regulation Crowdfunding offerings might cause some Regulation Crowdfunding issuers to incur a higher cost of capital.

The proposed amendments might yield efficiencies for investors by making it easier to analyze and compare payoff structures of securities across different offerings, potentially enabling investors to allocate their capital more efficiently. However, for some investors that have a sufficient ability to analyze the excluded types of securities and that seek to include those securities in their portfolio, the proposed amendments might limit the set of available investment opportunities and as a result, potentially affect the efficiency of their capital allocation.

The aggregate effects of the proposed amendments on competition among prospective issuers for investor capital are difficult to predict and would depend on the relative effects of the proposed amendments on issuer and investor willingness to participate in Regulation Crowdfunding. On the one hand, if the proposed amendments lead issuers to exit the Regulation Crowdfunding market, the extent of competition for investor capital in that market segment might be reduced. On the other hand, if the proposed amendments draw more investors to the Regulation Crowdfunding market by making comparisons across offerings incrementally easier, the effects on competition might be offset. The reallocation of issuers of excluded securities types to the Regulation D or other market segments might mitigate such effects.

Reasonable Alternatives

The proposed amendments would conform the security types eligible under Regulation Crowdfunding to those of Regulation A. As an alternative, we could make other modifications to the range of security types permissible in Regulation Crowdfunding offerings. For example, we could amend Regulation Crowdfunding to exclude only particular security types (such as SAFEs or SAFTs) that might be difficult to value for small investors. The costs and benefits of this alternative, compared to the proposal, would depend on several factors: Reliance on the excluded security type today; costs to issuers of using another offering exemption, such as Regulation D, to offer the excluded security type; costs to issuers of using a different security type under Regulation Crowdfunding; and the level of sophistication of investors in analyzing information and valuing excluded types of securities. As a further caveat, provisions proscribing highly specialized security designs might have limited long-term economic effects in the presence of financial innovation, whereby issuers and intermediaries might develop security designs that share some but not all features of the excluded security type and thus comply with the restriction. We believe that the proposed amendments would provide sufficient capital structure flexibility for the majority of issuers while enhancing comparability of payoff structures across Regulation Crowdfunding offerings.

Request for Comment

118. How would the proposed amendments to eligible security types affect Regulation Crowdfunding issuers, investors, and other market participants?

119. What would be the costs and benefits of a different set of eligible security types?

c. Excluding Delinquent Reporting Companies From Eligibility Under Regulation A

The proposed amendments would exclude reporting companies that are not current in periodic reports required under Section 13 or 15(d) of the Exchange Act from using Regulation A. This exclusion would be consistent with the exclusion from eligibility under Regulation A of issuers that are not subject to Exchange Act reporting and that have not filed required Regulation A periodic reports for the last two years.

Benefits

The proposed amendments to make reporting companies that are not current in periodic reports required under Section 13 or 15(d) of the Exchange Act ineligible under Regulation A are expected to promote investor protection and benefit investors by ensuring the availability of information about issuers required in periodic Exchange Act reports to Regulation A investors and thus enabling better informed investment decisions. Excluding companies that are subject to, but not current in, Exchange Act reporting obligations from eligibility under Regulation A may reduce the average level of information asymmetry about Regulation A issuers and incrementally increase investor interest in securities offered in this market.

To the extent that the effects of the proposal are driven by reallocation of reporting companies that are current in reporting obligations from registered offerings to Regulation A, the effects may be minimal. As a caveat, the use of Regulation A by reporting companies has been modest to date,[426] which may attenuate the effects of changes to reporting company eligibility under Regulation A. By extending similar requirements regarding being current in periodic reports that presently apply in follow-on Regulation A offerings to reporting companies in initial Regulation A offerings, the proposed amendments would increase uniformity in eligibility requirements across different categories of Regulation A issuers and could reduce potential for investor confusion.

Costs

The proposed amendments to limit the ability of issuers that are not current in periodic reports required under Section 13 or 15(d) of the Exchange Act to raise capital under Regulation A might lead to higher financing costs or reduced ability to raise the required financing for such issuers.

Effects on Efficiency, Competition, and Capital Formation

The proposed amendments to make reporting companies that are not current in periodic reports required under Section 13 or 15(d) of the Exchange Act ineligible under Regulation A might, on the margin, limit capital formation by those issuers. At the same time, by ensuring more timely availability of information in periodic reports to prospective Regulation A investors, the proposed amendments are expected to facilitate better informed decisions and more efficient allocation of investor capital in Regulation A offerings, and, for Regulation A securities with a secondary market, more informationally efficient security prices. In turn, if the amendments help alleviate investor concerns about adverse selection in the Regulation A market, the proposed amendments might promote greater investor interest in Regulation A securities, increasing aggregate capital formation in the Regulation A market.

These effects on capital formation and efficiency of capital allocation might be modest if the proposed amendments mainly result in a reallocation of delinquent reporting company issuers between Regulation A and other offering methods. We lack the ability to quantify the extent of such potential switching

[426] *See supra* note 406.

between offering methods as a result of the proposed amendments.

Reasonable Alternatives

As an alternative, we could have required filers to have filed in a timely manner all reports required to be filed during the prior 12 months, consistent with Form S–3 and F–3 requirements.[427] This alternative may benefit investors by incentivizing reporting companies that use Regulation A to provide timely periodic disclosures. However, we continue to believe that this alternative might increase costs and decrease the ability of reporting companies that have failed to timely file Exchange Act reports during the lookback period to raise follow-on Regulation A Tier 2 financing.[428] Further, such conditions are not imposed on issuers that are not subject to Exchange Act reporting obligations and that seek to offer Regulation A securities. Overall, relative to the proposed amendments, we do not expect the effects of this alternative to be significant given the other incentives that reporting companies have to remain current in their Exchange Act reports (*e.g.,* greater secondary market liquidity, not being delisted from an exchange or downgraded to a lower OTC market tier, future eligibility for a streamlined registration process, reduced legal liability, and a reputation for transparency).

Request for Comment

120. What would be the costs and benefits of excluding reporting companies that are not current in Exchange Act reporting obligations from eligibility under Regulation A, as proposed?

121. What would be the costs and benefits of imposing additional Regulation A eligibility conditions on issuers that are subject to Exchange Act periodic reporting obligations, such as timeliness in periodic reporting?

7. Bad Actor Disqualification Provisions

The disqualification provisions of Regulation A and Regulation Crowdfunding currently differ from the disqualification provisions in Rule 506(d) in defining the lookback period for the disqualification event through the time of the filing, rather than through the time of sale. As a result, in certain circumstances, periods of time may exist during Regulation A and Regulation Crowdfunding offerings where an offering continues despite an event that would have constituted a disqualifying event at the time of filing.[429] In order to harmonize the disqualification provisions of Regulation A and Regulation Crowdfunding with those of Rule 506(d) of Regulation D, we propose to specify that a disqualifying event that occurs at any time during an offering, not only prior to the filing, would disqualify the bad actor from further involvement in the offering. However, to reduce the cost for issuers of monitoring disqualification events that may affect beneficial owners during an ongoing offering, differently from the disqualification provision of Rule 506(d), we are proposing to retain the disqualification lookback period through the time of filing, rather than through the time of sale, for disqualification events affecting beneficial owners.

Benefits

By providing greater uniformity in the bad actor disqualification provisions across Rule 506(d), Rule 262(a), and Rule 503(a), the proposed amendments might facilitate compliance for issuers, particularly issuers that undertake different types of exempt offerings over time. The proposed amendments might further benefit issuers by reducing or even eliminating the need to undergo a potentially lengthy and costly Rule 258 suspension process in the event of a disqualifying event occurring after the filing. By preserving the existing ''through date of filing'' lookback period provision with respect to disqualifying events involving beneficial owners, the proposed amendments are expected to give issuers leeway to raise capital while managing disqualification monitoring costs.

The proposed amendments are expected to strengthen investor protection in cases of disqualifying events occurring after the initiation of an offering. This benefit is expected to be most salient for issuers in continuous offerings, which may span multiple months and years. For example, from June 2015 (when the 2015 Regulation A amendments raising the offering limit to $50 million took effect) through December 2019, based on the analysis of Form 1–A data, we estimate that approximately 80 percent of qualified Regulation A offerings were conducted on a continuous basis. Based on the analysis of Form C data from inception of Regulation Crowdfunding through December 2019, we estimate that the average (median) duration of a Regulation Crowdfunding offering was approximately four months (three months).

Costs

The proposed amendments to the disqualification provisions might impose costs on issuers and covered persons. Issuers that are disqualified from an ongoing Regulation A or Regulation Crowdfunding offering as a result of a disqualification event occurring after filing might experience an increased cost of capital or a reduced availability of capital, which could have negative effects on capital formation. By subjecting additional issuers to the potential for disqualification in the event of a disqualification event affecting a covered person (other than a beneficial owner) after the offering has commenced, the proposed amendments might cause some issuers to discontinue an offering, resulting in a failure to raise the required capital after some costs of preparing an offering statement or marketing an offering have already been incurred. The proposed amendments also might lead some issuers to incur additional due diligence costs and potentially modify their policies and procedures to reduce the odds of a disqualifying event during an ongoing offering (*e.g.,* replacing personnel or avoiding the participation of covered persons, other than beneficial owners, who are subject, or might become subject, to disqualifying events after filing). These additional costs of monitoring disqualification events in ongoing offerings are expected to be somewhat mitigated by the carve-out for events affecting the beneficial owner category of covered persons, which would remain subject to the existing lookback period (defined based on the date of filing) under the proposed amendments. In addition, issuers might incur costs related to seeking disqualification waivers from the Commission.

[427] *See* General Instruction I.A.3 to Form S–3 [17 CFR 239.13]; and General Instruction I.A.2 to Form F–3 [17 CFR 239.33].

[428] *See* 2018 Regulation A Release, at Section IV.B.c.2.

[429] As discussed in Section II.G above, under Regulation A, if a covered person triggers one of the disqualifying events in Rule 262, the Commission is able to suspend reliance on the Regulation A exemption through Rule 258, which requires a notice and hearing opportunity for the covered person. Furthermore, if a covered person triggers one of the disqualifying events, the issuer may need to consider whether it must suspend the offering until it files a post-qualification amendment to reflect a fundamental change in the information set forth in the most recent offering statement or post-qualification amendment. Regulation Crowdfunding, which similarly measures the lookback from the time of filing of the offering statement, does not have a suspension provision, similar to Regulation A, but similarly requires an issuer to amend the offering statement to disclose material changes, additions, or updates to information that it provides to investors for offerings that have not been completed or terminated.

Effects on Efficiency, Competition, and Capital Formation

As discussed above, the proposed amendments might cause some issuers whose covered persons (other than beneficial owners) become subject to a disqualification event after filing to discontinue an offering, resulting in decreased capital formation for such issuers. Additional costs of monitoring disqualification events might incrementally increase the compliance costs associated with conducting an offering under Regulation A or Regulation Crowdfunding. For Regulation Crowdfunding issuers, intermediaries might incur incrementally higher due diligence costs as well, insofar as the monitoring of disqualification triggers is not already a part of the intermediary's measures to reduce the risk of fraud.

We expect that the incrementally more stringent bad actor disqualification provisions in the proposed rules would lead most issuers to take additional steps to monitor disqualification events after filing and restrict the participation of covered persons (other than beneficial owners) in ongoing Regulation A and Regulation Crowdfunding offerings, which could incrementally help reduce the potential for fraud in these types of offerings and thus strengthen investor protection. To the extent that more stringent bad actor disqualification requirements under the proposed amendments, on the margin, increase investor interest in these offerings, overall capital formation in the Regulation A and Regulation Crowdfunding markets may increase. If the proposed amendments to the disqualification lookback period alleviate some of the concerns about adverse selection in the Regulation A and Regulation Crowdfunding markets and thus lower the risk premium associated with the risk of fraud due to the presence of bad actors in these markets, they could also reduce the cost of capital for issuers that rely on these offering exemptions.

Reasonable Alternatives

As an alternative, instead of disqualifying Regulation A or Regulation Crowdfunding issuers affected by disqualifying events during an ongoing offering, we could allow such issuers to continue the offering but require the disclosure of a disqualifying event and the option for investors to cancel their investment commitments and obtain a refund of invested funds. This alternative might reduce costs for some issuers affected by a disqualification trigger in the course of an ongoing offering. However, it also might result in costs to investors if investors fail to review the disclosure of a disqualifying event occurring after commencement of an offering. This alternative also would not be consistent with the disqualification provisions in Rule 506(d), which might introduce confusion for issuers and investors that participate in multiple offerings conducted pursuant to different securities exemptions.

The proposed amendments preserve the definition of the lookback period (using the time of filing as a basis) with respect to disqualification events affecting covered persons that are beneficial owners. As an alternative, we could extend the amended lookback period definition (continuing through the time of sale) with respect to disqualification events affecting all covered persons, including beneficial owners. Compared to the proposal, this alternative might incrementally strengthen investor protection to the extent that the types of disqualification events that affect beneficial owners after filing in continuous Regulation A or Regulation Crowdfunding offerings pose conflicts of interest or other significant risks to investors. However, compared to the proposal, this alternative might result in the exclusion of some issuers whose beneficial owners become subject to a disqualification trigger after filing from eligibility to conduct an offering. To minimize this risk, issuers might incur increased costs of monitoring potential disqualification events affecting beneficial owners under this alternative. Issuers also might incur costs to restructure their share ownership to avoid beneficial ownership of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power, by individuals that may become subject to disqualifying events after filing.

Request for Comment

122. What would be the costs and benefits of extending the disqualification lookback to the time of sale in Regulation A and Regulation Crowdfunding offerings as proposed?

123. What would be the costs and benefits of the alternative of extending the disqualification lookback to the time of sale for all covered persons, including beneficial owners, in Regulation A and Regulation Crowdfunding offerings?

V. Paperwork Reduction Act

A. Summary of the Collection of Information

Certain provisions of our rules and forms that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[430] The Commission is submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[431] The hours and costs associated with preparing and filing the 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 information disclosed. The titles for the affected collections of information are: [432]

- ''Regulation A (Form 1–A)'' (OMB Control No. 3235–0286);
- ''Regulation D'' (a proposed new collection of information);
- ''Regulation D Rule 504(b)(3)—Felons and Other Bad Actors Disclosure Statement'' (OMB Control No. 3235–0746);
- ''Regulation D Rule 506(e) Felons and Other Bad Actors Disclosure Statement'' (OMB Control No. 3235–0705);
- ''Form D'' (OMB Control No. 3235–0076); and

[430] *See* 44 U.S.C. 3501 *et seq.*

[431] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[432] As discussed in Section II.D.2 above, we are proposing to revise the confidential information standard used in our exhibit filing requirements to provide that information may be redacted if it is both not material and the type that the registrant treats as private or confidential. A number of collections of information could be affected by this proposed amendment, including Form 10–K (OMB Control No. 3235–0063), Form 10–Q (OMB Control No. 3235–0070), Form 8–K (OMB Control No. 3235–0060), Form S–1 (OMB Control No. 3235–0065), and Form 10 (OMB Control No. 3235–0064); as well as Form S–6 (OMB Control No. 3235–0184); Form N–14 (OMB Control No. 3235–0336); Form 20–F (OMB Control No. 3235–0288); Form F–1 (OMB Control No. 3235–0258); Form N–1A (OMB Control No. 3235–0307); Form N–2 (OMB Control No. 3235–0026); Form N–3 (OMB Control No. 3235–0316); Form N–4 (OMB Control No. 3235–0318); Form N–5 (OMB Control. No. 3235–0169); Form N–6 (OMB Control No. 3235–0503); and Form N–8B–2 (OMB Control No. 3235–0186). We preliminarily believe that the proposed standard would not change the paperwork burden associated with these collections of information because the revised standard would be applied in similar circumstances and in a similar way as the current standard.

• "Form C" (OMB Control No. 3235–0307).

We are proposing to combine the existing collections of information for Rule 504(b)(3), Rule 506(e), and Form D in a new collection of information that covers all of the PRA compliance burdens for Regulation D. The regulations and forms listed above were adopted under the Securities Act and set forth filing and disclosure requirements associated with exempt offerings. 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 Effects on the Collections of Information

PRA Table 1 [433] summarizes the estimated effects of the proposed amendments on the paperwork burdens associated with the affected collections of information listed in Section V.A.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN EFFECTS OF THE PROPOSED AMENDMENTS

Proposed amendments and effects	Affected collections of information	Estimated net effect
Regulation D:		
• Provide a new collection of information to encompass disclosure required by Regulation D, including the following:	• Regulation D (including Form D, Rule 502(b), Rule 504(b)(3), and Rule 506(e)).	• 5 hour compliance burden per response to the new collection of information *.
○ Financial statement and non-financial statement information and delivery requirements, including the proposed requirement to provide the purchaser with generic solicitation of interest materials (Rule 502(b)); and.		
○ Felon and bad actor disclosure requirements (Rules 504(b)(3)) and 506(e).		
Regulation A:		
• Requiring the filing of generic solicitation of interest materials. *Estimated burden increase: 0.5 hours per form*.	• Form 1–A	• 2 hour net decrease in compliance burden per form.
• Simplifying compliance with Regulation A by conforming certain requirements with similar requirements for registered offerings (including permitting the redaction of confidential information in certain exhibits; permitting incorporation by reference of financial statements in the offering circular; and simplifying the requirements for making non-public documents available to the public on EDGAR). *Estimated burden decrease: 2.5 hours per form*.		• 25 additional responses.
• We estimate that the increase in offering limit would increase the number of filings on Form 1–A by 25.**.		
Regulation Crowdfunding:		
• Requiring the filing of generic solicitation of interest materials and solicitations of interest under proposed Rule 206; and requiring disclosure about a co-issuer on Form C when an SPV is used. *Estimated burden increase: 1 hour per form*.	• Form C	• 1 hour net increase in compliance burden per form.
• We believe that increasing the offering limits under Regulation Crowdfunding would not affect the burden estimate per form, but we estimate that the increase in the offering limit would increase the number of filings on Form C by 55.***.		• 55 additional responses.

* We estimate that there is no net effect on the current burden hours per response relating to Regulation D as a result of the proposed amendments. However, as discussed above, we are proposing to establish a single collection of information for Regulation D to encompass all of the associated paperwork burdens, including the existing burdens associated with Form D, Rule 504(b)(3), and Rule 506(e). As a result, the new collection of information for Regulation D would reflect an increase from the aggregated burdens for the existing Form D, Rule 504(b)(3) and Rule 506(e) collections of information. *See* PRA Table 5 below.

** There were 125 Regulation A offerings filed in 2019. Although it is not possible to predict with any degree of certainty the increase in the number of Regulation A offerings following the proposed amendments, we estimate for purposes of the PRA an approximate 20 percent increase in the number of new Regulation A offerings resulting in 25 additional respondents. It is possible that the increase in the offering limit may also increase the number of Form 1–K, Form 1–SA, Form 1–U, and Form 1–Z filings. However, due to uncertainties regarding whether any increase in Tier 2 offerings would be conducted by Exchange Act reporting companies, we are not proposing an increase in the number of responses for the associated collections of information at this time.

*** The number of Regulation Crowdfunding offerings has increased to 552 offerings in the second full year since effectiveness of the rules. Although it is not possible to predict with any degree of certainty the increase in the number of Regulation Crowdfunding offerings following the proposed amendments, we estimate for purposes of the PRA an approximate 10 percent increase in the number of new Regulation Crowdfunding offerings resulting in 55 additional respondents.

C. Incremental and Aggregate Burden and Cost Estimates

Below we estimate the incremental and aggregate changes in paperwork burden as a result of the proposed amendments. These estimates represent the average burden for all issuers, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual issuers based on a number of factors, including the nature of their business. We believe that the proposed amendments would change the frequency of responses to the existing

[433] We do not believe that the proposed amendments with respect to the use of general solicitation in exempt offerings, integration of offerings, harmonization of bad actor disqualification provisions in Regulation A and Regulation Crowdfunding with those in Regulation D, excluding Exchange Act registrants that are delinquent filers from relying on Regulation A or increasing the investment limits under Regulation Crowdfunding would substantially or materially modify the number of new filings or the burdens for those filings. We also do not believe that the proposed limits on the types of securities offered under Regulation Crowdfunding would substantially or materially modify the number of Form C filings or the burdens for those filings due to the proposed amendments to allow for the use of crowdfunding vehicles.

collections of information and the burden per response.

The burden estimates were calculated by adding the estimated additional responses to the existing estimated responses and multiplying the estimated number of responses by the estimated average amount of time it would take an issuer 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. PRA Table 2 [434] sets forth the percentage estimates we typically use for the burden allocation for each collection of information and the estimated burden allocation for the proposed new collection of information for Regulation D. We also estimate that the average cost of retaining outside professionals is $400 per hour.[435]

PRA TABLE 2—ESTIMATED BURDEN ALLOCATION FOR SPECIFIED COLLECTIONS OF INFORMATION

Collection of information	Internal (%)	Outside professionals (%)
Forms 1–A, C	75	25
Regulation D	25	75

PRA Table 3 [436] 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' estimated effect on the paperwork burden per response.

PRA TABLE 3—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE PROPOSED AMENDMENTS

Collection of information	Number of estimated affected responses	Burden hour affect per current affected response	Change in burden hours for current affected responses	Change in company hours for current affected responses	Change in professional hours for current affected responses	Change in professional costs for current affected responses
	(A) [a]	(B)	(C) = (A) × (B)	(D) = (C) × 0.75	(E) = (C) × 0.25	(F) = (E) × $400
Form 1–A	204	(2)	(408)	(306)	(102)	($40,800)
Form C	5,907	1	5907	4,430	1,477	590,800

[a] The number of estimated affected responses is based on the number of responses in the Commission's current OMB PRA filing inventory plus the number of additional responses we estimate as a result of the proposed amendments (30 responses for Form 1–A, and 55 responses for Form C). The OMB PRA filing inventory represents a three-year average.

The table 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' estimated effect on the number of responses.

PRA TABLE 4—CALCULATION OF THE CHANGE IN BURDEN ESTIMATES AS A RESULT OF CHANGE IN NUMBER OF RESPONSES RESULTING FROM THE PROPOSED AMENDMENTS

Collection of information	Current burden			Program change		
	Current annual responses	Current burden hours	Current cost burden	Estimated additional responses	Change in company hours	Change in professional costs
	(A)	(B)	(C)	(D)	(E) = ((B)/(A)) × (D)	(F) = ((C)/(A)) × (D)
Form 1–A	179	98,396	$13,111,912	25	13,742	$1,932,390
Form C	5,852	214,928	28,500,000	55	2,020	267,857

The following tables summarize the requested paperwork burden, including the estimated total reporting burdens and costs, under the proposed amendments. Column (D) of PRA Table 5 includes additional responses estimated as a result of the proposed amendments.

[434] Here and in the tables below, we derived current estimated burdens and burden allocations for Regulation D using the estimates for Form D, Rule 504(b)(3), and Rule 506(e).

[435] 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.

[436] The estimated reductions in Columns (C), (D) and (E) are rounded to the nearest whole number.

PRA TABLE 5—REQUESTED PAPERWORK BURDEN UNDER THE PROPOSED AMENDMENTS

Collection of information	Current burden			Program change			Requested change in burden		
	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses (D)	Change in company hours (E) [aa]	Change in Professional Costs (F) [bb]	Annual responses (G)	Burden hours (H) = (B) + (E)	Cost burden (I) = (C) + (F)
Form 1–A	179	98,396	$13,111,912	204	13,436	$1,891,590	204	111,832	$15,003,502
Form C	5,852	214,928	28,500,000	5,907	6,450	858,657	5,907	221,378	29,358,657

[aa] From Column (D) in PRA Table 3 and Column (E) in PRA Table 4.
[bb] From Column (F) in PRA Table 3.

PRA Table 6 summarizes the requested paperwork burden for the new Regulation D collection of information, including the estimated total reporting burdens and costs, under the proposed amendments. The estimates for this proposed new collection of information include the existing burden estimated for Form D, Rule 504(b)(3), and Rule 506(e), as well as other burdens resulting from the implementation of Regulation D. For purposes of the PRA, we estimate that new Regulation D will entail a 5 hour compliance burden per response with 26,000 annual responses (derived from the current 26,000 annual responses for Form D.[437]

PRA TABLE 6—REQUESTED PAPERWORK BURDEN FOR THE NEW COLLECTION OF INFORMATION

Collection of information	Requested paperwork burden		
	Annual responses (A)	Burden hours (A) × 5 × (0.25)	Cost burden (A) × 5 × (0.75) × $400
Regulation D	26,000	32,500	$39,000,000

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 of our 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, with reference to File No. S7–05–20. Requests for materials submitted to OMB by the Commission with regard to the collection of information requirements should be in writing, refer to File No. S7–05–20 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington DC 20549. OMB is required to make a decision concerning the collection of information requirements between 30 and 60 days after publication of the proposed amendments. 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),[438] 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 (either in the form of an increase or a decrease);

• A major increase in costs or prices for consumers or individual industries; or

• Significant adverse effects on competition, investment, or innovation.

Request for Comment

We request comment on whether the proposed amendments would be a ''major rule'' for purposes of SBREFA. In particular, we request comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested

[437] We expect the amendments providing an additional method to verify an investor's accredited investor status and increasing the offering limit under Rule 504 could lead to additional Rule 506(c) or Rule 504 offerings. However, as discussed in Section IV above, some of these offerings may be conducted by issuers switching from other Regulation D exemptions. Additionally, some of the issuers conducting the additional Regulation A or Regulation Crowdfunding offerings may be switching from Regulation D offerings. Because it is difficult to predict the net impact of the proposed amendments on the overall number of Regulation D responses, we are not adjusting the current estimate of 26,000 responses at this time.

[438] 5 U.S.C. 801 *et seq.*

to provide empirical data and other factual support for their views to the extent possible.

VII. Initial Regulatory Flexibility Analysis

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (''RFA'') [439] 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.[440] This IRFA relates to proposed amendments or additions to the rules and forms described in Section II above.

A. Reasons for, and Objectives of, the Proposed Action

The proposed amendments are intended simplify, harmonize, and improve certain aspects of the exempt offering framework to promote capital formation while maintaining or enhancing important investor protections. The proposed amendments also seek to address gaps and complexities in the exempt offering framework that may impede access to investment opportunities for investors and capital for issuers. The reasons for, and objectives of, the proposed amendments are discussed in more detail in Section II above.

B. Legal Basis

The amendments contained in this release are being proposed under the authority set forth in the Securities Act, particularly, Sections 3, 4, 4A, 19 and 28 thereof; the Exchange Act, particularly, Sections 3, 10(b), 12, 15, 17, 23(a) and 36 thereof; and the Investment Company Act, particularly Sections 6(c), 8, 24, 30, 38, and 45; and Public Law 112–106, secs. 301–305, 126 Stat. 306 (2012).

C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect issuers that are small entities. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [441] For purposes of the RFA, under 17 CFR 230.157, an issuer, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities not exceeding $5 million. Under 17 CFR 270.0–10, an investment company, including a business development company, is considered to be a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.

The proposed amendments are expected to promote capital formation through exempt offerings and create additional flexibility for issuers. Because the proposed amendments would affect all issuers conducting offerings exempt from registration under the Securities Act, which includes companies not subject to ongoing reporting obligations under the Exchange Act, Regulation A, or Regulation Crowdfunding, it is difficult to estimate the number of issuers that qualify as small entities that would be eligible to rely on the proposed amendments.[442]

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

If adopted, the proposed amendments would apply to small entities to the same extent as other entities, irrespective of size. Therefore, we expect that the nature of any benefits and costs associated with the proposed amendments to be similar for large and small entities. Accordingly, we refer to the discussion of the proposed amendments' economic effects on all affected parties, including small entities, in Section IV above.[443] Consistent with that discussion, we anticipate that the economic benefits and costs likely could vary widely among small entities based on a number of factors, such as the nature and conduct of their businesses, including their capital raising decisions, which makes it difficult to project the economic impact on small entities with precision. Compliance with the proposed amendments may require the use of professional skills, including accounting and legal skills.

Many of the proposed amendments are expected to be of greatest benefit to the capital raising efforts of small entities that may lack an existing network of angel and VC funders and appear to face the greatest constraints in obtaining external financing. Examples of this include: Amendments to integration principles that are intended to facilitate multiple offerings, including offerings with general solicitation; amendments expanding investment limits and issuer eligibility under Regulation Crowdfunding; amendments tailoring the requirements for non-accredited investor sales under Rule 506(b); and amendments expanding the offering limits for Regulation Crowdfunding, Rule 504, and Regulation A. In addition, certain of the rules that we propose to amend, such as Regulation Crowdfunding and Rule 504, have eligibility requirements and other restrictions that increase the likelihood that such rules would be relied upon by small businesses that are seeking to raise relatively small amounts of capital without incurring the costs of conducting a registered offering.

Although many of the proposed amendments are expected to be of greatest benefit to the capital raising efforts of small entities, we acknowledge that any costs of the proposed amendments borne by the affected entities, such as those related to compliance with the proposed amendments, or the implementation or restructuring of internal systems needed to adjust to the proposed amendments, could have a proportionally greater effect on small entities, as they may be less able to bear such costs relative to larger entities. For example, the proposed amendments to the bad actor disqualification provisions [444] could cause some small entities to incur additional due diligence costs or modify their offerings to reduce the possibility of a disqualifying event (*e.g.,* replacing personnel or avoiding the participation of covered persons, other than beneficial owners, who are subject, or might become subject, to disqualifying events after filing). Similarly, small entities electing to use the proposed generic or Regulation Crowdfunding testing-the-waters provisions [445] might incur costs, such as those related to preparing the testing-the-waters materials. These potential costs would be borne equally by all issuers, regardless of size.

[439] 5 U.S.C. 601 *et seq.*

[440] 5 U.S.C. 603(a).

[441] 5 U.S.C. 601(6).

[442] In particular, as discussed in Section IV above, due to the large number of offerings in reliance on the offering exemptions in Regulation D relative to other offering exemptions affected by the proposed amendments, most of which are conducted by issuers that are not subject to Exchange Act, Regulation A, or Regulation Crowdfunding reporting requirements, Regulation D issuers are likely to continue to comprise a significant share of the small entities affected by the proposed amendments. However, we do not have information on the assets of such issuers, which is required for an estimate of small entities for purposes of the RFA definition, because this information is not required by Form D and because such issuers may not be subject to ongoing reporting requirements.

[443] We also discuss the estimated compliance burden associated with the proposed amendments for purposes of the PRA in Section V above.

[444] *See supra* Section II.G.

[445] *See supra* Section II.B.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We do not believe the proposed amendments would duplicate, overlap, or conflict with other federal rules.

F. Significant Alternatives

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

The proposed amendments generally would simplify, harmonize, and improve certain aspects of the exempt offering framework to promote capital formation, including for offering exemptions used by and designed primarily for small entities. Thus, we do not think it is necessary to exempt small entities from all or part of these requirements.

Several of the offering exemptions that we have proposed to amend (*e.g.,* Regulation A and Regulation Crowdfunding) already contain different compliance or reporting requirements that take into account the resources of the smaller entities that are likely to utilize these exemptions. In addition, certain of our proposals clarify, consolidate, or simplify compliance and reporting requirements under our rules, which should benefit small entities in particular. For example, we are proposing amendments to the financial statement information requirements in Regulation D to align them with the disclosure requirements in Regulation A. We are also proposing several amendments to simplify compliance with Regulation A, such as the redaction of confidential information in certain exhibits, harmonizing the procedures for publicly filing draft Regulation A offering statements with those for draft Securities Act registration statements, and permitting issuers to incorporate previously-filed financial statements by reference into a Regulation A offering statement. Finally, we are proposing revisions to Regulation Crowdfunding and rules under the Investment Company Act intended to help reduce administrative complexities that some issuers may encounter under Regulation Crowdfunding.

With respect to using performance rather than design standards, we note that several of the proposed amendments concern rules that use principles-based approaches that are more akin to performance standards. For example, we are proposing a general principle of integration that would require an issuer to consider the particular facts and circumstances of each offering, including whether the issuer can establish that each offering either complies with the registration requirements of the Securities Act, or that an exemption from registration is available for the particular offering.

G. Request for Comment

We encourage the submission of comments with respect to any aspect of this IRFA. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities discussed in the analysis;
- How the proposed amendments could further lower the burden on small entities; and
- How to quantify the impact of the proposed amendments.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

Statutory Authority and Text of Proposed Rule Amendments

The amendments contained in this release are being proposed under the authority set forth in the Securities Act (15 U.S.C. 77a *et seq.*), particularly, Sections 3, 4, 4A, 19 and 28 thereof; the Exchange Act (15 U.S.C. 78a *et seq.*), particularly, Sections 3, 10(b), 12, 15, 17, 23(a) and 36 thereof; the Investment Company Act (15 U.S.C. 80a–1 *et seq.*), particularly Sections 6(c), 8, 24, 30, 38, and 45; and Pub. L. 112–106, secs. 301–305, 126 Stat. 306 (2012).

List of Subjects

17 CFR Part 227

Crowdfunding, Reporting and recordkeeping requirements, Securities.

17 CFR Part 229

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Administrative practice and procedure, Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Administrative practice and procedure, Brokers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Administrative practice and procedure, Confidential business information, Fraud, Investment companies, Life insurance, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Administrative practice and procedure, Electronic funds transfer, Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out above, the Commission proposes to amend title 17, chapter II of the Code of Federal Regulations, as follows:

PART 227—REGULATION CROWDFUNDING, GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 227 continues to read as follows:

Authority: 15 U.S.C. 77d, 77d–1, 77s, 77z–3, 78c, 78o, 78q, 78w, 78mm, and Pub. L. 112–106, secs. 301–305, 126 Stat. 306 (2012).

■ 2. Amend § 227.100 by:

■ a. Revising paragraphs (a)(1) and (2); and

■ b. Adding paragraphs (b)(7) and (e).

The revisions and additions read as follows:

§ 227.100 Crowdfunding exemption and requirements.

(a) * * *

(1) The aggregate amount of securities sold to all investors by the issuer in reliance on section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) during the 12-month period preceding the date of such offer or sale, including the securities offered in such transaction, shall not exceed $5,000,000;

(2) Where the purchaser is not an accredited investor (as defined in Rule

501 (§ 230.501 of this chapter)), the aggregate amount of securities sold to such an investor across all issuers in reliance on section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) during the 12-month period preceding the date of such transaction, including the securities sold to such investor in such transaction, shall not exceed:

(i) The greater of $2,200, or 5 percent of the greater of the investor's annual income or net worth, if either the investor's annual income or net worth is less than $107,000; or

(ii) 10 percent of the greater of the investor's annual income or net worth, not to exceed an amount sold of $107,000, if both the investor's annual income and net worth are equal to or more than $107,000;

* * * * *

(b) *Applicability.* * * *

(7) Are not equity securities, debt securities, and securities convertible or exchangeable to equity interests, including any guarantees of such securities.

* * * * *

(e) *Integration with other offerings.* To determine whether offers and sales should be integrated, please see Rule 152 (§ 230.152 of this chapter).

■ 3. Amend § 227.201 by:

■ a. Revising the introductory text;

■ b. Removing the word ''and'' at the end of paragraph (x);

■ c. Removing the period at the end of paragraph (y) and adding in its place ''; and''; and

■ d. Adding paragraph (z).

The revisions and addition read as follows:

§ 227.201 Disclosure requirements.

An issuer offering or selling securities in reliance on section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and in accordance with section 4A of the Securities Act (15 U.S.C. 77d–1) and this part, and any co-issuer jointly offering or selling securities with such an issuer in reliance on the same, must file with the Commission and provide to investors and the relevant intermediary the following information:

* * * * *

(z) Any written communication or broadcast script provided in accordance with § 227.206 or, if within 30 days of the initial filing of the offering statement, § 230.241 of this chapter.

* * * * *

■ 4. Amend § 227.204 by revising paragraphs (a) and (b)(1) to read as follows:

§ 227.204 Advertising.

(a) An issuer may not, directly or indirectly, advertise the terms of an offering made in reliance on section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), except for oral or written communications that meet the requirements of paragraph (b) of this section or § 227.206.

* * * * *

(b) * * *

(1) A statement that the issuer is conducting an offering pursuant to section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)), the name of the intermediary through which the offering is being conducted, and information (including a link in any written communications) directing the potential investor to the intermediary's platform;

* * * * *

■ 5. Add § 227.206 to read as follows:

§ 227.206 Solicitations of interest and other communications.

(a) *Solicitation of interest.* At any time before the filing of an offering statement, an issuer may communicate orally or in writing to determine whether there is any interest in a contemplated securities offering. Such communications are deemed to be an offer of a security for sale for purposes of the antifraud provisions of the federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted until the offering statement is filed.

(b) *Conditions.* The communications must:

(1) State that no money or other consideration is being solicited, and if sent in response, will not be accepted;

(2) State that no offer to buy the securities can be accepted and no part of the purchase price can be received until the offering statement is filed; and

(3) State that a person's indication of interest involves no obligation or commitment of any kind.

(c) *Indications of interest.* Any written communication under this rule may include a means by which a person may indicate to the issuer that such person is interested in a potential offering. This issuer may require the name, address, telephone number, and/or email address in any response form included pursuant to this paragraph (c).

■ 6. Amend § 227.503 by revising paragraphs (a) and (b)(3) to read as follows:

§ 227.503 Disqualification provisions.

(a) *Disqualification events.* No exemption under this section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) shall be available for a sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, officer, general partner or managing member of the issuer; any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of filing, any offer after filing, or such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; or any general partner, director, officer or managing member of any such solicitor:

(1) Has been convicted, within 10 years before the filing of the offering statement or such sale (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, funding portal or paid solicitor of purchasers of securities;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) or such sale that, at the time of such filing or sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, funding portal or paid solicitor of purchasers of securities;

(3) Is subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) At the time of the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) or such sale, bars the person from:

(A) Association with an entity regulated by such commission, authority, agency or officer;

(B) Engaging in the business of securities, insurance or banking; or

(C) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct entered within ten years before such filing of the offering statement or such sale;

Instruction to paragraph (a)(3). Final order shall mean a written directive or declaratory statement issued by a federal or state agency, described in § 227.503(a)(3), under applicable statutory authority that provides for notice and an opportunity for hearing, which constitutes a final disposition or action by that federal or state agency.

(4) Is subject to an order of the Commission entered pursuant to section 15(b) or 15B(c) of the Exchange Act (15 U.S.C. 78o(b) or 78o–4(c)) or Section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e) or (f)) that, at the time of the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) or such sale:

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer, investment adviser or funding portal;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(5) Is subject to any order of the Commission entered within five years before the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) or such sale that, at the time of such filing or sale, orders the person to cease and desist from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation Section 17(a)(1) of the Securities Act (15 U.S.C. 77q(a)(1)), Section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and 17 CFR 240.10b–5, section 15(c)(1) of the Exchange Act (15 U.S.C. 78o(c)(1)) and Section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(1)) or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act (15 U.S.C. 77e);

(6) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(7) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or Regulation A (17 CFR 230.251 through 230.263 of this chapter) offering statement filed with the Commission that, within five years before the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) or such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such filing or sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(8) Is subject to a United States Postal Service false representation order entered within five years before the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) or such sale, or is, at the time of such filing or sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

Instruction to paragraph (a): With respect to any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power, the issuer is required to determine whether a disqualifying event has occurred only as of the time of filing of the offering statement and not from the time of such sale.

(b) * * *

(3) If, before the filing of the information required by section 4A(b) of the Securities Act (15 U.S.C. 77d–1(b)) or such sale, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the Commission or its staff) that disqualification under paragraph (a) of this section should not arise as a consequence of such order, judgment or decree; or

* * * * *

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

■ 7. 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, 78l, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78ll, 78mm, 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).

* * * * *

■ 8. Amend § 229.601 by revising paragraphs (b)(2)(ii) and (b)(10)(iv) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(2) * * *

(ii) The registrant may redact specific provisions or terms of exhibits required to be filed by paragraph (b)(2) of this Item if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and is the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses. The registrant may request confidential treatment of the supplemental material submitted under this paragraph (b)(2)(ii) pursuant to Rule 83 (§ 200.83 of this chapter) while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the

Commission or its staff will return or destroy it if the registrant complies with the procedures outlined in Rules 418 or 12b–4 (§ 230.418 or 240.12b–4 of this chapter).

* * * * *

(10) * * *

(iv) The registrant may redact specific provisions or terms of exhibits required to be filed by this paragraph (b)(10) if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and is the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses. The registrant may request confidential treatment of the supplemental material submitted under this paragraph (b)(10)(iv) pursuant to Rule 83 (§ 200.83 of this chapter) while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it if the registrant complies with the procedures outlined in Rules 418 or 12b–4 (§ 230.418 or 240.12b–4 of this chapter).

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 9. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, secs. 201(a), 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

Section 230.502 is also issued under 15 U.S.C. 80a–8, 80a–29, 80a–30.

* * * * *

■ 10. Amend § 230.147 by revising paragraph (g) and removing paragraph (h) to read as follows:

§ 230.147 Intrastate offers and sales.

* * * * *

(g) *Integration with other offerings.* To determine whether offers and sales should be integrated, please see Rule 152 (§ 230.152).

■ 11. Amend § 230.147A by revising paragraph (g) and removing paragraph (h) to read as follows:

§ 230.147A Intrastate sale exemption.

* * * * *

(g) *Integration with other offerings.* To determine whether offers and sales should be integrated, please see Rule 152 (§ 230.152).

■ 12. Add § 230.148 to read as follows:

§ 230.148 Exemption from general solicitation or general advertising.

A communication will not be deemed to constitute general solicitation or general advertising if made in connection with a seminar or meeting by a college, university, or other institution of higher education, local government, nonprofit organization, or angel investor group, incubator, or accelerator sponsoring the seminar or meeting, provided that:

(a) No advertising for the seminar or meeting references a specific offering of securities by the issuer;

(b) The sponsor of the seminar or meeting does not:

(1) Make investment recommendations or provide investment advice to attendees of the event;

(2) Engage in any investment negotiations between the issuer and investors attending the event;

(3) Charge attendees of the event any fees, other than reasonable administrative fees;

(4) Receive any compensation for making introductions between event attendees and issuers or for investment negotiations between such parties; and

(5) Receive any compensation with respect to the event that would require registration of the sponsor as a broker or a dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*); and

(c) The type of information regarding an offering of securities by the issuer that is communicated or distributed by or on behalf of the issuer in connection with the event is limited to a notification that the issuer is in the process of offering or planning to offer securities, the type and amount of securities being offered, and the intended use of proceeds of the offering.

Instruction to § 230.148: For purposes of this subsection, the term ''angel investor group'' means a group of accredited investors that holds regular meetings and has written processes and procedures for making investment decisions, either individually or among the membership of the group as a whole, and is neither associated nor affiliated with brokers, dealers, or investment advisers.

■ 13. Revise § 230.152 to read as follows:

§ 230.152 Integration.

This section provides a general principle of integration and non-exclusive safe harbors from integration of registered and exempt offerings. Because of the objectives of this rule and the policies underlying the Act, these safe harbors are not available to any issuer for any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.

(a) *General principle of integration.* If the safe harbors in paragraph (b) of this section do not apply, in determining whether two or more offerings are to be treated as one for the purpose of registration or qualifying for an exemption from registration under the Act, offers and sales will not be integrated if, based on the particular facts and circumstances, the issuer can establish that each offering either complies with the registration requirements of the Act, or that an exemption from registration is available for the particular offering. In making this determination:

(1) For an exempt offering for which general solicitation is not permitted, offers and sales will not be integrated with other offerings if the issuer has a reasonable belief, based on the facts and circumstances, that:

(i) The purchasers in each exempt offering were not solicited through the use of general solicitation; or

(ii) The purchasers in each exempt offering established a substantive relationship with the issuer (or person acting on the issuer's behalf) prior to the commencement of the offering not permitting general solicitation; and

(2) For an exempt offering permitting general solicitation that includes information about the material terms of a concurrent offering under another exemption also permitting general solicitation, the offering materials must include the necessary legends for, and

otherwise comply with, the requirements of each exemption.

(b) *Safe harbors:* No integration analysis under paragraph (a) of this section is required, if any of the following non-exclusive safe harbors apply:

(1) Any offering made more than 30 calendar days before the commencement of any other offering, or more than 30 calendar days after the termination or completion of any other offering, will not be integrated, *provided that* for an exempt offering for which general solicitation is not permitted, the purchasers either:

(i) Were not solicited through the use of general solicitation; or

(ii) Established a substantive relationship with the issuer prior to the commencement of the offering for which general solicitation is not permitted;

(2) Offers and sales made in compliance with Rule 701 (§ 230.701), pursuant to an employee benefit plan, or in compliance with Regulation S (§§ 230.901 through 230.906) will not be integrated with other offerings;

(3) An offering for which a registration statement under the Act has been filed will not be integrated if it is made subsequent to:

(i) A terminated or completed offering for which general solicitation is not permitted;

(ii) A terminated or completed offering for which general solicitation is permitted made only to qualified institutional buyers and institutional accredited investors; or

(iii) An offering for which general solicitation is permitted that terminated or completed more than 30 calendar days prior to the commencement of the registered offering; or

(4) Offers and sales made in reliance on an exemption for which general solicitation is permitted will not be integrated if made subsequent to any prior terminated or completed offering.

(c) For purposes of this section, an offering would be deemed to be terminated or completed if:

(1) Made in reliance on Section 15 U.S.C. 77d(a)(2) (4(a)(2)), Regulation D (§§ 230.501 through 230.508), or Rules 147 (§ 230.147) or 147A (§ 230.147A), on the later of the date:

(i) The issuer entered into a binding commitment to sell securities under the offering (subject only to conditions outside of the investor's control); or

(ii) The issuer and its agents ceased efforts to make further offers to sell the issuer's securities;

(2) Made in reliance on Regulation A (§§ 230.251 through 230.263), on the:

(i) Withdrawal of an offering statement under Rule 259(a) (§ 230.259(a));

(ii) Filing of a Form 1–Z (§ 239.94 of this chapter) with respect to that offering;

(iii) Declaration by the Commission that the offering statement has been abandoned under Rule 259(b) (§ 230.259(b)); or

(iv) Third anniversary of the initial qualification date of the offering statement, in the case of continuous or delayed offerings;

(3) Made in reliance on Regulation Crowdfunding, on the deadline of the offering identified in the offering materials pursuant to Rule 201(g) (§ 227.201(g) of this chapter), or indicated by the Regulation Crowdfunding intermediary in any notice to investors delivered under Rule 304(b) (§ 227.304(b) of this chapter);

(4) Made in reliance on a filed registration statement:

(i) On the withdrawal of the registration statement after the Commission grants such application under Rule 477 (§ 230.477);

(ii) On the filing of an amendment or supplement to the registration statement indicating that the registered offering has been terminated or completed and the deregistering of any unsold securities if required by Item 512(a)(3) of Regulation S–K (§ 229.512(a)(3) of this chapter);

(iii) On the entry of an order of the Commission declaring that the registration statement has been abandoned under Rule 479 (§ 230.479); or

(iv) As set forth in Rule 415(a)(5) (§ 230.415(a)(5)).

§ 230.155 [Removed and Reserved]

■ 14. Remove and reserve § 230.155.

■ 15. Add § 230.241 to read as follows:

§ 230.241 Solicitations of interest.

(a) *Solicitation of interest.* At any time before making a determination as to the exemption from registration under the Act under which an offering of securities will be conducted, an issuer or any person authorized to act on behalf of an issuer may communicate orally or in writing to determine whether there is any interest in a contemplated securities offering. Such communications are deemed to be an offer of a security for sale for purposes of the antifraud provisions of the federal securities laws. No solicitation or acceptance of money or other consideration, nor of any commitment, binding or otherwise, from any person is permitted until the issuer makes a determination as to the exemption to be relied upon and the offering, meeting the requirements of the exemption, is commenced.

(b) *Conditions.* The communications must state that:

(1) The issuer is considering an offering of securities exempt from registration under the Act, but has not determined a specific exemption from registration the issuer intends to rely upon for the subsequent offer and sale of the securities;

(2) No money or other consideration is being solicited, and if sent in response, will not be accepted;

(3) No offer to buy the securities can be accepted and no part of the purchase price can be received until the issuer determines the exemption under which the offering is intended to be conducted and, where applicable, the filing, disclosure, or qualification requirements of such exemption are met; and

(4) A person's indication of interest involves no obligation or commitment of any kind.

(c) *Indications of interest.* Any written communication under this rule may include a means by which a person may indicate to the issuer that such person is interested in a potential offering. The issuer may require the name, address, telephone number, and/or email address in any response form included pursuant to this paragraph (c).

■ 16. Amend § 230.251 by revising paragraphs (a)(2), (b)(7), and (c) to read as follows:

§ 230.251 Scope of exemption.

* * * * *

(a) * * *

(2) *Tier 2.* Offerings pursuant to Regulation A in which the sum of the aggregate offering price and aggregate sales does not exceed $75,000,000, including not more than $22,500,000 offered by all selling security holders that are affiliates of the issuer (''Tier 2 offerings'').

* * * * *

(b) * * *

(7) Has filed with the Commission all reports required to be filed, if any, pursuant to Rule 257 (§ 230.257) or pursuant to Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o) during the two years before the filing of the offering statement (or for such shorter period that the issuer was required to file such reports); and

* * * * *

(c) *Integration with other offerings.* To determine whether offers and sales should be integrated, please see Rule 152 (§ 230.152).

* * * * *

§ 230.255 [Amended]

■ 17. Amend § 230.255 by removing paragraph (e).

■ 18. Amend § 230.259 by revising paragraph (b) to read as follows:

§ 230.259 Withdrawal or abandonment of offering statements.

* * * * *

(b) Abandonment. When an offering statement, or a post-qualification amendment to such statement, has been on file with the Commission for nine months without amendment and has not become qualified, the Commission may, in its discretion, declare the offering statement or post-qualification amendment abandoned. If the offering statement has been amended, or if the post-qualification amendment has been amended, the nine-month period shall be computed from the date of the latest amendment.

■ 19. Amend § 230.262 by revising paragraphs (a) and (b)(3) to read as follows:

§ 230.262 Disqualification provisions.

(a) *Disqualification events.* No exemption under this Regulation A (§§ 230.251 through 230.346) shall be available for a sale of securities if the issuer; any predecessor of the issuer; any affiliated issuer; any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the issuer in any capacity at the time of filing, any offer after qualification, or such sale; any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; any general partner or managing member of any such solicitor; or any director, executive officer or other officer participating in the offering of any such solicitor or general partner or managing member of such solicitor:

(1) Has been convicted, within ten years before the filing of the offering statement or such sale (or five years, in the case of issuers, their predecessors and affiliated issuers), of any felony or misdemeanor:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(2) Is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before the filing of the offering statement or such sale that, at the time of such filing or such sale, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the Commission; or

(iii) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

(3) Is subject to a final order (as defined in Rule 261 (§ 230.261)) of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) At the time of the filing of the offering statement or such sale, bars the person from:

(A) Association with an entity regulated by such commission, authority, agency, or officer;

(B) Engaging in the business of securities, insurance or banking; or

(C) Engaging in savings association or credit union activities; or

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before such filing of the offering statement or such sale;

(4) Is subject to an order of the Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(b) or 78*o*–4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e) or (f)) that, at the time of the filing of the offering statement or such sale:

(i) Suspends or revokes such person's registration as a broker, dealer, municipal securities dealer or investment adviser;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock;

(5) Is subject to any order of the Commission entered within five years before the filing of the offering statement or such sale that, at the time of such filing or sale, orders the person to cease and desist from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 CFR 240.10b–5, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(1)), or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

(6) Is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(7) Has filed (as a registrant or issuer), or was or was named as an underwriter in, any registration statement or offering statement filed with the Commission that, within five years before the filing of the offering statement or such sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of such filing or such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(8) Is subject to a United States Postal Service false representation order entered within five years before the filing of the offering statement or such sale, or is, at the time of such filing or such sale, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

Instruction to paragraph (a): With respect to any beneficial owner of 20 percent or more of the issuer's outstanding voting equity securities, calculated on the basis of voting power, the issuer is required to determine whether a disqualifying event has occurred only as of the time of filing of the offering statement and not from the time of such sale.

(b) * * *

(3) If, before the filing of the offering statement or the relevant sale, the court or regulatory authority that entered the relevant order, judgment or decree advises in writing (whether contained in the relevant judgment, order or decree or separately to the Commission or its staff) that disqualification under paragraph (a) of this section should not arise as a consequence of such order, judgment or decree; or

* * * * *

■ 20. Amend § 230.502 by:

■ a. Revising paragraph (a);

■ b. Removing the Note following paragraph (a);

■ c. Revising paragraph (b)(2)(i)(B); and

■ d. Adding paragraph (b)(2)(viii).

The revisions and addition read as follows:

§ 230.502 General conditions to be met.

* * * * *

(a) *Integration.* To determine whether offers and sales should be integrated, please see Rule 152 (§ 230.152).

(b) * * *

(2) * * *

(i) * * *

(B) *Financial statement information*—(*1*) *Offerings up to $20,000,000.* The financial statement information required by paragraph (b) of Part F/S of Form 1–A. Such financial statement information must be prepared in in accordance with generally accepted accounting principles in the United States (US GAAP). If the issuer is a foreign private issuer, such financial statements must be prepared in accordance with either US GAAP or International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB). If the financial statements comply with IFRS, such compliance must be explicitly and unreservedly stated in the notes to the financial statements and if the financial statements are audited, the auditor's report must include an opinion on whether the financial statements comply with IFRS as issued by the IASB.

(*2*) *Offerings over $20,000,000.* The financial statement information required by paragraph (c) of Part F/S of Form 1–A (referenced in § 239.90 of this chapter). If the issuer is a foreign private issuer, such financial statements must be prepared in accordance with either US GAAP or IFRS as issued by the IASB. If the financial statements comply with IFRS, such compliance must be explicitly and unreservedly stated in the notes to the financial statements and the auditor's report must include an opinion on whether the financial statements comply with IFRS as issued by the IASB.

* * * * *

(viii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under § 230.506(b), the issuer shall provide the purchaser with any written communications used under the authorization of Rule 241 within 30 days of the such sale.

* * * * *

■ 21. Amend § 230.504, by revising the section heading, paragraph (b)(2), and the instruction to paragraph (b)(2) to read as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $10,000,000.

* * * * *

(b) * * *

(2) The aggregate offering price for an offering of securities under this § 230.504, as defined in § 230.501(c), shall not exceed $10,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of and during the offering of securities under this § 230.504 or in violation of section 5(a) of the Securities Act.

Instruction to paragraph (b)(2): If a transaction under § 230.504 fails to meet the limitation on the aggregate offering price, it does not affect the availability of this § 230.504 for the other transactions considered in applying such limitation. For example, if an issuer sold $10,000,000 of its securities on January 1, 2020, under this § 230.504 and an additional $500,000 of its securities on July 1, 2020, this § 230.504 would not be available for the later sale, but would still be applicable to the January 1, 2020, sale.

* * * * *

■ 22. Amend § 230.506 by:

■ a. Revising paragraph (b)(2)(i);

■ b. Removing the word "or" from the end of paragraph (c)(2)(ii)(B)(*2*);

■ c. Removing the "." and adding in its place ";" at the end of paragraph (c)(2)(ii)(C)(*4*);

■ d. Removing the "." and adding in its place "; or" at the end of paragraph (c)(2)(ii)(D);

■ e. Adding paragraph (c)(2)(ii)(E); and

■ f. Revising the heading to *Instructions to paragraph (c)(2)(ii)(A) through (D) of this section.*

The revisions and addition read as follows:

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

* * * * *

(b) * * *

(2) * * *

(i) *Limitation on number of purchasers.* There are no more than, or the issuer reasonably believes that there are no more than, 35 purchasers of securities from the issuer in offerings under this section in any 90 calendar day period.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(E) In regard to any person that the issuer has previously verified as an accredited investor in accordance with this paragraph (c)(2)(ii), so long as the issuer is not aware of information to the contrary, obtaining a written representation from such person at the time of sale that he or she qualifies as an accredited investor.

Instructions to paragraph (c)(2)(ii)(A) through (E) of this section: * * *

* * * * *

■ 23. Amend § 230.902 by revising paragraph (c)(1) and adding paragraph (c)(3)(ix) to read as follows:

§ 230.902 Definitions.

* * * * *

(c) * * *

(1) Except as specified in this section, "directed selling efforts" means any activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States for any of the securities being offered in reliance on this Regulation S (§§ 230.901 through 230.906, and Preliminary Notes). Such activity includes placing an advertisement in a publication "with a general circulation in the United States" that refers to the offering of securities being made in reliance upon this Regulation S.

* * * * *

(3) * * *

(ix) Activity undertaken in connection with offers or sales under an exemption from registration under the Act that involves general solicitation or general advertising, *provided that* such activity is not undertaken for the purpose of conditioning the market in the United States for any of the securities being offered in reliance on this Regulation S.

* * * * *

■ 24. Add § 230.906 to read as follows:

§ 230.906 General solicitation; transfer restrictions.

An issuer that engages in activity in connection with offers or sales under an exemption from registration under the Act that is deemed to not be "directed selling efforts" pursuant § 230.902(c)(3)(ix) may concurrently make offers or sales in reliance on this Regulation S (§§ 230.901 through 230.906, and Preliminary Notes). However, securities acquired from the issuer, a distributor, or any of their respective affiliates in such Regulation S offering are not permitted to be resold to a U.S. person or for the account or benefit of a U.S. person for a period of six months from the date of sale, except to qualified institutional buyers, as defined in § 230.144A, or accredited investors that are institutions, as defined in § 230.501(a).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 25. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m,78n, 78o(d), 78o–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.

* * * * *

■ 26. Amend Form S–6 (referenced in § 239.16) by revising Additional Instruction 3 of ''Instructions as to Exhibits'' to read as follows:

Note: The text of Form S–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S–6

* * * * *

Instructions as to Exhibits

* * * * *

Additional Instructions:

* * * * *

3. The registrant may redact specific provisions or terms of exhibits required to be filed by paragraph (9) of section IX of Form N–8B–2 (Exhibits) if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses. The registrant may request confidential treatment of the supplemental material submitted under this Instruction 3 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the registrant complies with the procedures outlined in Rule 418 under the Securities Act [17 CFR 230.418].

* * * * *

■ 27. Amend Form N–14 (referenced in § 239.23) by revising Instruction 3 to Item 16 to read as follows:

Note: The text of Form N–14 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–14

* * * * *

Item 16. Exhibits

* * * * *

Instructions:

* * * * *

3. The registrant may redact specific provisions or terms of exhibits required to be filed by paragraph (13) of this Item if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses. The registrant may request confidential treatment of the supplemental material submitted under this Instruction 3 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the registrant complies with the procedures outlined in Rule 418 under the Securities Act [17 CFR 230.418].

* * * * *

■ 28. Amend Form 1–A (referenced in § 239.90) by:

■ a. Revising General Instruction I;

■ b. Revising General Instruction III(a);

■ c. Revising paragraphs 13 and 17 of Part III, Item 17; and

■ d. Adding an instruction at the end of Part III, Item 17.

The revisions and addition read as follows:

Note: The text of Form 1–A does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 1–A

REGULATION A OFFERING STATEMENT UNDER THE SECURITIES ACT OF 1933

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form 1–A.

This Form is to be used for securities offerings made pursuant to Regulation A (17 CFR 230.251 through 230.263). Careful attention should be directed to the terms, conditions and requirements of Regulation A, especially Rule 251, because the exemption is not available to all issuers or for every type of securities transaction. Further, the aggregate offering price and aggregate sales of securities in any 12-month period is strictly limited to $20 million for Tier 1 offerings and $75 million for Tier 2 offerings, including no more than $6 million offered by all selling securityholders that are affiliates of the issuer for Tier 1 offerings and $22.5 million by all selling securityholders that are affiliates of the issuer for Tier 2 offerings. Please refer to Rule 251 of Regulation A for more details.

* * * * *

III. Incorporation by Reference and Cross-Referencing.

* * * * *

(a) The use of incorporation by reference and cross-referencing in Part II of this Form:

(1) Is limited to the following items:

(A) Items 2–14 of Part II and Part F/S if following the Offering Circular format;

(B) Items 3–11 of Form S–1 if following the Part I of Form S–1 format; or

(C) Items 3–28, and 30 of Form S–11 if following the Part I of Form S–11 format;

(2) May only incorporate by reference previously submitted or filed financial statements if the issuer meets the following requirements:

(A) The issuer has filed with the Commission all reports and other materials required to be filed, if any, pursuant to Rule 257 (§ 230.257 of this chapter) or by Sections 13(a), 14 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the issuer was required to file such reports and other materials);

(B) the issuer makes the financial statement information that is incorporated by reference pursuant to this item readily available and accessible on a website maintained by or for the issuer; and

(C) the issuer must state that it will provide to each holder of securities, including any beneficial owner, a copy of the financial statement information that have been incorporated by reference in the offering statement upon written or oral request, at no cost to the requester, and provide the issuer's website address, including the uniform resource locator (URL) where the incorporated financial statements may be accessed.

* * * * *

Part III—Exhibits

* * * * *

Item 17. Description of Exhibits

* * * * *

13. ''*Testing-the-waters*'' *materials*—Any written communication or broadcast script used under the authorization of Rule 241 within 30 days of the initial filing of the offering statement, and any written communication or broadcast script used under the authorization of Rule 255. Materials used under the authorization of Rule 255 need not be filed if they are substantively the same as materials previously filed with the offering statement.

* * * * *

17. *Additional exhibits*—Any additional exhibits which the issuer may wish to file, which must be so marked as to indicate clearly the subject matters to which they refer.

* * * * *

Instruction to Item 17:

The issuer may redact specific provisions or terms of exhibits required to be filed by paragraph 6 or 7 of this Item, if the issuer customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the issuer should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and is the type that the registrant treats as private or confidential. The issuer also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the issuer must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the issuer's supplemental materials, the Commission or its staff may require the issuer to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the issuer's analyses. The issuer may request confidential treatment of the supplemental material submitted under paragraphs 6 or 7 pursuant to Rule 83 (§ 200.83 of this chapter) while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it if the registrant complies with the procedures outlined in Rule 418 (§ 230.418 of this chapter).

* * * * *

■ 29. Amend Form C (referenced in § 239.900) by:

■ a. Adding items to the Cover Page after ''website of the Issuer,''

■ b. Revising General Instruction I;

■ c. Revising Instruction 1 to the Signature; and

■ d. Revising the introductory paragraphs in the Optional Question and Answer Format for an Offering Statement; and

■ e. Revising Question 11 in the Optional Question and Answer Format for an Offering Statement.

The addition and revisions to read as follows:

Note: The text of Form C does not, and this amendment will not, appear in the Code of Federal Regulations.

Form C

Under The Securities Act of 1933

* * * * *

Is there a co-issuer? __ yes __ no. If yes,

Name of co-issuer: ___________

Leal status of co-issuer:

Form: ___________

Jurisdiction of Incorporation/ Organization: ___________

Date of organization: ___________

Physical address of co-issuer: ________

Website of co-issuer: _________

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form C

This Form shall be used for the offering statement, and any related amendments and progress reports, required to be filed by any issuer offering or selling securities in reliance on the exemption in Securities Act Section 4(a)(6) and in accordance with Section 4A and Regulation Crowdfunding (§§ 227.100 through 227.503). The term ''issuer'' includes any co-issuer jointly offering or selling securities with an issuer in reliance on the exemption in Securities Act Section 4(a)(6) and in accordance with Securities Act Section 4A and Regulation Crowdfunding (§§ 227.100 through 227.503) This Form also shall be used for an annual report required pursuant to Rule 202 of Regulation Crowdfunding (§ 227.202 of this chapter) and for the termination of reporting required pursuant to Rule 203(b)(2) of Regulation Crowdfunding (§ 227.203(b)(2) of this chapter). Careful attention should be directed to the terms, conditions and requirements of the exemption.

* * * * *

SIGNATURES

* * * * *

Instructions.

1. The form shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least a majority of the board of directors or persons performing similar functions. If there is a co-issuer, the form shall also be signed by the co-issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and at least a majority of the board of directors or persons performing similar functions.

* * * * *

OPTIONAL QUESTION AND ANSWER FORMAT FOR AN OFFERING STATEMENT

Respond to each question in each paragraph of this part. Set forth each question and any notes, but not any instructions thereto, in their entirety. If disclosure in response to any question is responsive to one or more other questions, it is not necessary to repeat the disclosure. If a question or series of questions is inapplicable or the response is available elsewhere in the Form, either state that it is inapplicable, include a cross-reference to the responsive disclosure, or omit the question or series of questions. The term ''issuer'' in these questions and answers includes any ''co-issuer'' jointly offering or selling securities with the issuer in reliance on the exemption in Securities Act Section 4(a)(6) and in accordance with Securities Act Section 4A and Regulation Crowdfunding (§§ 227.100 through 227.503). Any information provided with respect to the issuer should also be separately provided with respect to any co-issuer.

Be very careful and precise in answering all questions. Give full and complete answers so that they are not misleading under the circumstances involved. Do not discuss any future performance or other anticipated event unless you have a reasonable basis to believe that it will actually occur within the foreseeable future. If any answer requiring significant information is materially inaccurate, incomplete or misleading, the Company, its management and principal shareholders may be liable to investors based on that information.

* * * * *

11. (a) Did the issuer make use of any written communication or broadcast script for testing-the-waters either (i) under the authorization of Rule 241 within 30 days of the initial filing of the offering statement, or (ii) under the authorization of Rule 206? If so, provide copies of the materials used.

(b) How will the issuer complete the transaction and deliver securities to the investors?

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 30. 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.

Section 240.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.308 is also issued under 15 U.S.C. 80a–29 and 80a–37.

* * * * *

■ 31. Amend Form 20–F (referenced in § 249.220f) by revising the second, third and fourth paragraphs following instruction 4.(a)(ii) under ''Instructions as to Exhibits,'' and prior to the note, 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.

FORM 20–F

* * * * *

INSTRUCTIONS AS TO EXHIBITS

* * * * *

4. (a) * * *

(ii) completes a transaction that had the effect of causing it to cease being a public shell company.

The only contracts that must be filed are those to which the registrant or a subsidiary of the registrant is a party or has succeeded to a party by assumption or assignment or in which the registrant or such subsidiary has a beneficial interest.

The registrant may redact specific provisions or terms of exhibits required to be filed by this Form 20–F if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and is the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses. The registrant may request confidential treatment of the supplemental material submitted under this instruction pursuant to Rule 83 (§ 200.83 of this chapter) while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it if the registrant complies with the procedures outlined in Rules 418 or 12b–4 (§ 230.418 or 240.12b–4 of this chapter).

* * * * *

■ 32. Amend Form 8–K (referenced in § 249.308) by revising Instruction 6 under Item 1.01 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.

FORM 8–K

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

Section 1—Registrant's Business and Operations

Item 1.01 Entry Into a Material Definitive Agreement

* * * * *

Instructions.

* * * * *

6. To the extent a material definitive agreement is filed as an exhibit under this Item 1.01, the registrant may redact specific provisions or terms of the exhibit if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material, provided that the registrant intends to incorporate by reference this filing into its future periodic reports or registration statements, as applicable, in satisfaction of Item 601(b)(10) of Regulation S–K. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and is the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses. The registrant may request confidential treatment of the supplemental material submitted under this instruction

pursuant to Rule 83 (§ 200.83 of this chapter) while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it if the registrant complies with the procedures outlined in Rules 418 or 12b–4 (§ 230.418 or 240.12b–4 of this chapter).

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 33. The authority citation for part 270 continues to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2020), unless otherwise noted;

* * * * *

■ 34. Add § 270.3a–9 to read as follows:

§ 270.3a–9 Crowdfunding vehicle.

(a) Notwithstanding section 3(a) of the Act, a crowdfunding vehicle will be deemed not to be an investment company if the vehicle:

(1) Is organized and operated for the sole purpose of acquiring, holding, and disposing of securities issued by a single crowdfunding issuer and raising capital in one or more offerings made in compliance with Regulation Crowdfunding;

(2) Does not borrow money and uses the proceeds from the sale of its securities solely to purchase a single class of securities of a single crowdfunding issuer;

(3) Issues only one class of securities in one or more offerings under Regulation Crowdfunding in which the crowdfunding vehicle and the crowdfunding issuer are deemed to be co-issuers under the Securities Act (15 U.S.C. 77a *et seq.*);

(4) Receives a written undertaking from the crowdfunding issuer to fund or reimburse the expenses associated with its formation, operation, or winding up, receives no other compensation, and any compensation paid to any person operating the vehicle is paid solely by the crowdfunding issuer;

(5) Maintains the same fiscal year-end as the crowdfunding issuer;

(6) Maintains a one-to-one relationship between the number, denomination, type and rights of crowdfunding issuer securities it owns and the number, denomination, type and rights of its securities outstanding;

(7) Seeks instructions from the holders of its securities with regard to:

(i) The voting of the crowdfunding issuer securities it holds and votes the crowdfunding issuer securities only in accordance with such instructions; and

(ii) Participating in tender or exchange offers or similar transactions conducted by the crowdfunding issuer and participates in such transactions only in accordance with such instructions;

(8) Receives, from the crowdfunding issuer, all disclosures and other information required under Regulation Crowdfunding and the crowdfunding vehicle promptly provides such disclosures and other information to the investors and potential investors in the crowdfunding vehicle's securities and to the relevant intermediary; and

(9) Provides to each investor the right to direct the crowdfunding vehicle to assert the rights under state and federal law that the investor would have if he or she had invested directly in the crowdfunding issuer and provides to each investor any information that it receives from the crowdfunding issuer as a shareholder of record of the crowdfunding issuer.

(b) For purposes of this section:

(1) *Crowdfunding issuer* means a company that seeks to raise capital as a co-issuer in an offering by a crowdfunding vehicle that complies with all of the requirements under Section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and Regulation Crowdfunding.

(2) *Crowdfunding vehicle* means an issuer formed by or on behalf of a crowdfunding issuer for the purpose of conducting an offering under section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) as a co-issuer with the crowdfunding issuer, which offering is controlled by the crowdfunding issuer.

(3) *Regulation Crowdfunding* means the regulations set forth in 17 CFR 227.100 through 227.503.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 35. The authority citation for part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a 24, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 36. Amend Form N–5 (referenced in §§ 239.24 of this chapter and 274.5) by revising Instruction 3 in ''Instructions as to Exhibits'' to read as follows:

Note: The text of Form N–5 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–5

Registration Statement of Small Business Investment Company Under the Securities Act of 1933 and the Investment Company Act of 1940*

* * * * *

Instructions as to Exhibits

* * * * *

Instructions:

* * * * *

3. The registrant may redact specific provisions or terms of exhibits required to be filed by paragraph 9 of this Item if the registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses. The registrant may request confidential treatment of the supplemental material submitted under this Instruction 3 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the registrant complies with the procedures outlined in Rule 418 under the Securities Act of 1933 [17 CFR 230.418].

* * * * *

■ 37. Amend Form N–1A (referenced in §§ 239.15A of this chapter and 274.11A) by:

■ a. Amending the last sentence of Instruction 2 to Item 28 by replacing ''registrant'' with ''Registrant'';

■ b. Amending Instruction 3 to Item 28 by replacing ''registrant'' with ''Registrant''; and

■ c. Revising Instruction 4 to Item 28. The revisions read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 28. Exhibits

* * * * *

Instructions

* * * * *

4. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraph (h) of this Item if the Registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the Registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the Registrant treats as private or confidential. The Registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the Registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the Registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the Registrant's analyses. The Registrant may request confidential treatment of the supplemental material submitted under this Instruction 4 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the Registrant complies with the procedures outlined in rule 418 under the Securities Act [17 CFR 230.418].

* * * * *

■ 38. Amend Form N–2 (referenced in §§ 239.14 of this chapter and 274.11a-1) by:

■ a. Amending the last sentence of Instruction 4 to Item 25.2 by replacing ''registrant'' with ''Registrant'';

■ b. Amending Instruction 5 to Item 25.2 by replacing ''registrant'' with ''Registrant''; and

■ c. Revising Instruction 6 to Item 25.2.

The revisions read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 25. Financial Statements and Exhibits

* * * * *

2. Exhibits:

* * * * *

Instructions

* * * * *

6. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraph k. of this Item if the Registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the Registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the Registrant treats as private or confidential. The Registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the Registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the Registrant's supplemental materials, the Commission or its staff may require the Registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the Registrant's analyses. The Registrant may request confidential treatment of the supplemental material submitted under this Instruction 6 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the Registrant complies with the procedures outlined in Rule 418 under the Securities Act [17 CFR 230.418].

* * * * *

■ 39. Amend Form N–3 (referenced in §§ 239.17a of this chapter and 274.11b) by revising Instruction 5 to Item 29(b) to read as follows:

Note: The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 29. Financial Statements and Exhibits

* * * * *

(b) Exhibits:

* * * * *

Instructions

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5. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraphs (9) and (11) of this Item if the Registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the Registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the Registrant treats as private or confidential. The Registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the Registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the Registrant's supplemental materials, the Commission or its staff may require the Registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the Registrant's analyses. The Registrant may request confidential treatment of the supplemental material submitted under this Instruction 5 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the Registrant complies with the procedures outlined in Rule 418 under the Securities Act [17 CFR 230.418].

* * * * *

■ 40. Amend Form N–4 (referenced in §§ 239.17b of this chapter and 274.11c) by revising Instruction 5 to Item 24(b) to read as follows:

Note: The text of Form N–4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–4

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Item 24. Financial Statements and Exhibits

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(b) Exhibits:

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Instructions

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5. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraphs (7) and (8) of this Item if the Registrant customarily and actually treats that information as private or confidential and if the omitted information is not material. If it does so, the Registrant should mark the exhibit index to indicate that portions of the exhibit or exhibits have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the Registrant treats as private or confidential. The Registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the Registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the Registrant's supplemental materials, the Commission or its staff may require the Registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the Registrant's analyses. The Registrant may request confidential treatment of the supplemental material submitted under this Instruction 5 pursuant to Rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the Registrant complies with the procedures outlined in Rule 418 under the Securities Act [17 CFR 230.418].

* * * * *

■ 41. Amend Form N–6 (referenced in §§ 239.17c of this chapter and 274.11d) by revising Instruction 3 to Item 26 to read as follows:

Note: The text of Form N–6 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–6

* * * * *

Item 26. Exhibits

* * * * *

Instructions:

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3. The Registrant may redact specific provisions or terms of exhibits required to be filed by paragraphs (g) and (j) of this Item if the Registrant customarily and actually treats that information as private. If it does so, the Registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the Registrant treats as private or confidential. The Registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the Registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the Registrant's supplemental materials, the Commission or its staff may require the Registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the Registrant's analyses. The Registrant may request confidential treatment of the supplemental material submitted under this Instruction 3 pursuant to rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the Registrant complies with the procedures outlined in rule 418 under the Securities Act [17 CFR 230.418].

* * * * *

■ 42. Amend Form N–8B–2 (referenced in § 274.12) by revising Instruction 3 to ''IX Exhibits'' to read as follows:

Note: The text of Form N–8B–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–8B–2

Registration Statement of Unit Investment Trusts Which Are Currently Issuing Securities

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IX

EXHIBITS

* * * * *

Instructions:

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3. The registrant may redact specific provisions or terms of exhibits required to be filed by A(9) if the registrant customarily and actually treats that information as private. If it does so, the registrant should mark the exhibit index to indicate that portions of the exhibit have been omitted and include a prominent statement on the first page of the redacted exhibit that certain identified information has been excluded from the exhibit because it is both not material and the type that the registrant treats as private or confidential. The registrant also must include brackets indicating where the information is omitted from the filed version of the exhibit. If requested by the Commission or its staff, the registrant must promptly provide on a supplemental basis an unredacted copy of the exhibit and its materiality and privacy or confidentiality analyses. Upon evaluation of the registrant's supplemental materials, the Commission or its staff may require the registrant to amend its filing to include in the exhibit any previously redacted information that is not adequately supported by the registrant's analyses. The registrant may request confidential treatment of the supplemental material submitted under this Instruction 3 pursuant to rule 83 of the Commission's Organizational Rules [17 CFR 200.83] while it is in the possession of the Commission or its staff. After completing its review of the supplemental information, the Commission or its staff will return or destroy it, if the registrant complies with the procedures outlined in rule 418 under the Securities Act [17 CFR 230.418].

* * * * *

By the Commission.

Dated: March 4, 2020.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2020–04799 Filed 3–30–20; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 85 Tuesday,

No. 62 March 31, 2020

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rules To List the Bi-State Distinct Population Segment of Greater Sage-Grouse With Section 4(d) Rule and To Designate Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R8–ES–2018–0106 and FWS–R8–ES–2018–0107; FF09E21000 FXES11110900000 201]

RINs 1018–BD87 and 1018–BD88

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rules To List the Bi-State Distinct Population Segment of Greater Sage-Grouse With Section 4(d) Rule and To Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), withdraw the proposed rule to list the Bi-State distinct population segment (DPS) of greater sage-grouse (*Centrocercus urophasianus*) in California and Nevada as threatened under the Endangered Species Act of 1973, as amended (Act). We concurrently withdraw the proposed rule under section 4(d) of the Act and the proposed rule to designate critical habitat for the DPS. These withdrawals are based on our conclusion that the threats to the DPS as identified in the proposed listing rule no longer are as significant as believed at the time of publication of the 2013 proposed rule. We find the best scientific and commercial data available indicate that the threats to the DPS and its habitat, given current and future conservation efforts, are reduced to the point that the DPS does not meet the Act's definition of an ''endangered species'' or of a ''threatened species.''

DATES: The U.S. Fish and Wildlife Service is withdrawing proposed rules published on October 28, 2013 (78 FR 64328 and 64358) as of March 31, 2020.

ADDRESSES: Relevant documents are available on the internet at either Docket No. FWS–R8–ES–2018–0106 or Docket No. FWS–R8–ES–2018–0107 on *http://www.regulations.gov.* Relevant documents used in the preparation of this withdrawal are also available for public inspection, by appointment, during normal business hours at the Reno Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Lee Ann Carranza, Deputy Field Supervisor, Reno Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone 775–861–6300. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish this document. Under the Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. We issued a proposed rule to list a distinct population segment (DPS) of greater sage-grouse in California and Nevada (known as the Bi-State DPS) in 2013. However, this document withdraws that proposed rule because we now determine that threats identified in the proposed rule have been reduced such that listing is not necessary for this DPS. Accordingly, we also withdraw the proposed rule under section 4(d) of the Act and the proposed critical habitat designation.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that threats have been reduced such that listing is not necessary for the Bi-State DPS of greater sage-grouse.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of five appropriate specialists regarding the species report. We received responses from three specialists, which informed this finding. The purpose of peer review is to ensure that our listing determinations, critical habitat designations, and 4(d) rules are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the greater sage-grouse.

Acronyms and Abbreviations Used in This Document

We use many acronyms and abbreviations throughout this document. To assist the reader, we provide a list of these here for easy reference:

ac = acres
Act or ESA = Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)
BLM = Bureau of Land Management
BSAP = Bi-State Action Plan
BSLPG = Bi-State Local Planning Group
BSLSP = Bi-State Lek Surveillance Program
CDFW = California Department of Fish and Wildlife (formerly California Department of Fish and Game (CDFG))
CFR = Code of Federal Regulations
COT = Conservation Objectives Team
CPT = conservation planning tool
CRI = credible intervals
DPS = distinct population segment
EOC = Executive Oversight Committee
FR = Federal Register
ha = hectares
HTNF = Humboldt-Toiyabe National Forest
IPM = integrated population model
LADWP = Los Angeles Department of Water and Power
LRMP = land resource management plan
NDOW = Nevada Department of Wildlife
NEPA = National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)
NFMA = National Forest Management Act (16 U.S.C. 1600 *et seq.*)
NRCS = Natural Resources Conservation Service
OHV = off-highway vehicle
PECE = Policy for Evaluation of Conservation Efforts When Making Listing Decisions
PEIS = Programmatic Environmental Impact Statement
PMU = population management unit
RHA = rangeland health assessment
RMP = resource management plan
Service = U.S. Fish and Wildlife Service
TAC = Technical Advisory Committee
USDA = U.S. Department of Agriculture
USFS = U.S. Forest Service
USGS = U.S. Geological Survey
WAFWA = Western Association of Fish and Wildlife Agencies
WNv = West Nile virus

Previous Federal Actions

The Bi-State DPS of the greater sage-grouse has a long and complex rulemaking history. Here, we will discuss only the major Federal actions related to the species. For a detailed description of previous Federal actions, please refer to the previous withdrawal of the proposed listing rule, published on April 23, 2015 (80 FR 22828), and the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) analysis we prepared as a supporting document for this determination (Service 2019, pp. 1–6).

On October 28, 2013, we published a proposed rule to list the Bi-State DPS as a threatened species with a 4(d) rule (78 FR 64358). On that same day, we published a proposed rule to designate critical habitat for the Bi-State DPS (78 FR 64328).

On April 23, 2015, we withdrew the proposed listing rule, the proposed 4(d) rule, and the proposed critical habitat rule (80 FR 22828). This withdrawal was based on our conclusion that the threats to the DPS as identified in the proposed listing rule were no longer as significant as believed at the time of publication of the proposed rule. We found that the best scientific and commercial data available indicated that the threats to the DPS and its habitat, given current and future conservation efforts as analyzed under PECE, were reduced to the point that the DPS did not meet the Act's definition of an ''endangered species'' or of a ''threatened species.''

On March 9, 2016, Desert Survivors, the Center for Biological Diversity, WildEarth Guardians, and Western Watershed Project filed suit in the U.S. District Court for the Northern District of California. The suit challenged the withdrawal of the proposal to list the Bi-State DPS. On May 5, 2018, the court issued a decision. The April 23, 2015, withdrawal was vacated and remanded to the Service for further consideration. The court's action reinstated the prior proposed rules to list and to designate critical habitat for the Bi-State DPS, thereby returning the process to the proposed rule stage, and the status of the Bi-State DPS effectively reverted to that of a species proposed for listing for the purposes of consultation under section 7 of the Act. The court's action also reinstated the proposed 4(d) rule and the proposed critical habitat designation for the Bi-State DPS.

On April 12, 2019, we published in the **Federal Register** (84 FR 14909) a document that announced that the proposed rules were reinstated and the public comment periods were reopened for 60 days and that we would publish a final listing determination on or before October 1, 2019.

On October 1, 2019, we announced a 6-month extension of the final listing determination to April 1, 2020 (84 FR 52058). We took that action based on substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the proposed listing, which made it necessary to solicit additional information. That document reopened the public comment period on the proposed listing and critical habitat rules for an additional 30 days.

Supporting Documents

We prepared a species report for the Bi-State DPS (Service 2020, entire). The species report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. The Service sent the species report to five independent peer reviewers and received three responses. The Service also sent the species report to all pertinent Federal, Tribal, and State partners, including scientists with expertise in sage-grouse and sage-brush habitat in the Bi-State area. We received reviews from six partners (Humboldt-Toiyabe National Forest (HTNB), Inyo National Forest, two Bureau of Land Management (BLM) offices: Bishop and Carson City, the California Department of Fish and Wildlife (CDFW), and the Nevada Department of Wildlife (NDOW)). These comments have been incorporated into the species report and informed this document.

Summary of Changes From the Proposed Rule

Based upon our review of the public comments, Federal and State agency comments, peer review comments, issues addressed at the public hearings, and any new relevant information that became available since the publication of the proposal and including new relevant information that has become available since the prior withdrawal decision, we reevaluated our proposed listing rule and made changes as appropriate in this withdrawal. Other than minor clarifications and incorporation of additional information on the species' biology and populations, this determination differs from the proposal in the following ways:

(1) *A different status determination.* Based on our analyses of the potential threats to the species, and our consideration of partially completed, ongoing and future conservation efforts (as outlined below in Policy for Evaluation of Conservation Efforts When Making Listing Decisions), we have determined that the Bi-State DPS should not be listed as a threatened species. Specifically, we have determined that conservation efforts (as outlined in the Bi-State Action Plan (BSAP), Agency commitment letters, and our detailed PECE analysis (all of which are available at either Docket No. FWS–R8–ES–2018–0106 or Docket No. FWS–R8–ES–2018–0107 on *http://www.regulations.gov* as well as the Technical Advisory Committee (TAC) comprehensive project database)) will continue to be implemented because (to date) we have a documented track record of active participation and implementation by the signatory agencies and commitments to continue implementation into the future.

Conservation measures, such as (but not limited to) pinyon-juniper removal, establishment of conservation easements for critical brood-rearing habitat, cheatgrass (*Bromus tectorum)* removal, permanent and seasonal closure of roads near leks, removal and marking of fencing, and restoration of riparian/meadow habitat have been occurring over the past decade, are currently occurring, and have been prioritized and placed on the agencies' implementation schedules for future implementation. Agencies have committed to remain participants in the BSAP and to continue conservation of the DPS and its habitat. Additionally, the BSAP has sufficient methods for determining the type and location of the most beneficial conservation actions to be implemented, including continued development of new population and threats information in the future that will guide conservation efforts. As a result of these actions, this document withdraws the proposed rules as published on October 28, 2013 (78 FR 64328; 78 FR 64358).

We have also updated our Significant Portion of the Range analysis based on a recent court finding regarding the policy.

(2) *Addition of PECE analysis.* This document includes the Policy for Evaluation of Conservation Efforts When Making Listing Decisions section, which includes some information presented in the Available Conservation Measures section of the proposed listing rule.

(3) *Population impacts.* This document includes a discussion of the impacts of small population size and population isolation on the Bi-State DPS.

(4) *New information.* Following publication of the proposed listing rule, we received new information pertinent to this rulemaking action. Some of the information was in response to our request for scientific peer review of the proposed listing rule, while other information was a result of new literature now available, or updated regulations. We incorporated all new information into the Species Report (Service 2020, entire), which is available on the internet at *http://www.regulations.gov* under either Docket No. FWS–R8–ES–2018–0106 or Docket No. FWS–R8–ES–2018–0107, as well as within this document where appropriate. New information includes (but is not limited to):

- A variety of biological or habitat clarifications, such as hen movement distances, nesting success, and invasive plant species influence on sagebrush-habitat dynamics.
- Updated trend and population analyses. Multiple new papers examining the population dynamics and trends of the Bi-State DPS (Coates et al. 2014, entire; Coates et al. 2018, entire; Mathews et al. 2018, entire; Coates et al.

2020, entire). These studies are incorporated into the Species Report and discussed throughout this document.

- Two genetic evaluations, one of which concluded there are three or four unique genetic clusters within the Bi-State area (Oyler-McCance et al. 2014, p. 8), and a second that concluded there were five unique genetic clusters (Tebbenkamp 2014, p. 18). Tebbenkamp (2014) did not evaluate the Pine Nut population; thus, six populations may have been identified by Tebbenkamp (2014) had the Pine Nut population data been available.
- New information on the effectiveness of pinyon-juniper removal has become available in recent years (Prochazka et al. 2017, entire; Severson et al. 2017, entire; Sandford et al. 2017, entire; Coates et al. 2017b, entire; Olsen 2019, entire). These studies are incorporated into the Species Report and discussed throughout this document.

(5) *New ESA factor D analysis.* In the 2013 proposed listing rule, we analyzed the adequacy of existing regulatory mechanisms in a separate section. Here, we evaluate the effects of existing regulatory mechanisms within each threat analysis, rather than evaluating regulatory mechanisms in a separate section, so that it is clear how the existing regulatory mechanisms relate to the stressor being analyzed.

(6) *Significant portion of the range (SPR) analysis.* Since 2013, we have a new policy regarding the Service's interpretation of the phrase ''significant portion of the range'' (79 FR 37578; July 1, 2014). We also have new guidance regarding application of that policy (Service 2017, entire), which was published subsequent to the 2015 withdrawal of the proposed rule. Additionally, certain parts of the policy have been invalidated by court orders. We have completed our SPR analysis for the Bi-State DPS in accordance with the 2014 policy and the 2017 guidance as further refined by applicable court decisions.

Background

In our 12-month findings on petitions to list three entities of sage-grouse (75 FR 13910, March 23, 2010), we found that the Bi-State population of greater sage-grouse in California and Nevada meets our criteria to qualify as a DPS of the greater sage-grouse under Service policy (61 FR 4722, February 7, 1996). We reaffirmed this finding in the October 28, 2013, proposed listing rule (78 FR 64358) and do so again in this document. This determination is based principally on genetic information (Benedict et al. 2003, p. 308; Oyler-McCance et al. 2005, p. 1307), where the DPS was found to be both markedly separated and significant to the remainder of the greater sage-grouse taxon. The Bi-State DPS defines the far southwestern limit of the species' range along the border of eastern California and western Nevada (Stiver et al. 2006, pp. 1–11; 71 FR 76058, December 19, 2006).

Although the Bi-State DPS is a genetically unique and markedly separate population, the DPS has similar life-history and habitat requirements to the greater sage-grouse throughout the rest of its range. In the October 28, 2013, proposed listing rule (78 FR 64358), the species report, and this document, we use information specific to the Bi-State DPS where available but still apply scientific management principles for greater sage-grouse that are relevant to the Bi-State DPS's management needs and strategies. This practice is followed by the wildlife and land management agencies that have responsibility for management of both the DPS and its habitat.

A detailed discussion of the Bi-State DPS's description, taxonomy, habitat (sagebrush ecosystem), seasonal habitat selection, life-history characteristics, home range, life expectancy and survival rates, historical and current range distribution, population estimates and lek (sage-grouse breeding complex) counts, population trends, and land ownership information is available in the species report (Service 2020, entire). The species report represents a compilation of the best scientific and commercial data available concerning the status of the Bi-State DPS, including the past, present, and future threats to this DPS. The species report and other materials relating to this final agency action can be found at *http://www.regulations.gov* under either Docket No. FWS–R8–ES–2018–0106 or Docket No. FWS–R8–ES–2018–0107.

Habitat and Life History

Sage-grouse depend on a variety of shrub and shrub-steppe vegetation communities throughout their life cycle (Schroeder et al. 2004, p. 364). Sagebrush is the most widespread vegetation in the intermountain lowlands of the western United States and is considered one of the most imperiled ecosystems in North America (West and Young 2000, p. 259; Knick et al. 2003, p. 612; Miller et al. 2011, p. 147). Most species of sagebrush are killed by fire; historical fire-return intervals are estimated to be as long as 350 years (West 1983, p. 341; Miller and Eddleman 2000, p. 17; West and Young 2000, p. 259; Baker 2011, pp. 191–192). Natural sagebrush recolonization in burned areas depends on the presence of adjacent live plants for a seed source or on the seed bank, if present, and requires from decades to over a century for full recovery (Miller and Eddleman 2000, p. 17; Baker 2011, pp. 194–195).

Sage-grouse require large, interconnected expanses of sagebrush with healthy, native understories, in part to accommodate their seasonal shifts in habitat selection within the sagebrush ecosystem (Service 2020, p. 11). Sage-grouse exhibit strong site fidelity (loyalty to a particular area) to migration corridors and seasonal habitats, including breeding, nesting, brood-rearing, and wintering areas; they exhibit this fidelity even when a particular area may no longer be of value, limiting the species' adaptability to habitat changes (Service 2020, p. 11). However, recent research has suggested that this high degree of site fidelity may be more flexible than has traditionally been considered, at least with respect to certain restoration actions (*e.g.,* tree removal; Sandford et al. 2017, p. 64; Severson et al. 2017, p. 55).

During the spring breeding season, male sage-grouse gather to perform courtship displays at leks or traditional strutting grounds. Areas of bare soil, short-grass steppe, windswept ridges, exposed knolls, or other relatively open sites typically serve as leks (Patterson 1952, p. 83; Connelly et al. 2004, p. 3–7 and references therein). The proximity, configuration, and abundance of nesting habitat are key factors influencing lek location (Connelly et al. 1981, pp. 153–154; Connelly et al. 2000a, p. 970). Leks can be formed opportunistically at any appropriate site within or adjacent to nesting habitat (Connelly et al. 2000a, p. 970); therefore, lek habitat availability is not considered a limiting factor for sage-grouse (Schroeder et al. 1999, p. 4). Leks range in size from less than 0.04 ha (0.1 ac) to over 36 ha (90 ac) (Connelly et al. 2004, p. 4–3) and can host from a few to hundreds of males (Johnsgard 2002, p. 112).

The distances sage-grouse move between seasonal habitats are highly variable across the occupied range (Connelly et al. 1988, pp. 119–121). Migration can occur between distinct winter, breeding, and summer areas or the seasonal-use areas may be variously integrated (*e.g.,* winter and breeding areas may be the same and brood-rearing sites are disjunct). Information available regarding seasonal migrations and migratory corridors for sage-grouse in the Bi-State area is variable. Some local breeding complexes (a general aggregation of birds associated with a particular lek or collection of leks in relatively close proximity to one another) remain fairly resident throughout the year while others demonstrate a more itinerant nature (Casazza et al. 2009, p. 8).

Still, all sage-grouse gradually move from sagebrush uplands to more mesic areas (moist areas such as upland meadows) during the late brood-rearing/summer period (3 weeks post-hatch) in response to summer desiccation of herbaceous vegetation (Connelly et al. 2000a, p. 971; Atamian et al. 2010, p. 1538; Connelly et al. 2011b, pp. 76–77 and references therein; Pratt et al. 2017, p. 635). Brood-rearing foraging habitats with increased perennial forb cover and plant species richness, greater meadow to sagebrush edge (ratio of perimeter to area), and a greater distance from woodlands provide for an increased probability of successful recruitment (Casazza et al. 2011, pp. 162–163). Sage-grouse will use free water, although they do not require it since they obtain water from their food. However, natural water bodies and reservoirs provide mesic areas often rich in succulent forb and insect food sources, thereby attracting sage-grouse hens with broods (Connelly et al. 2004, p. 4–12).

Non-migratory sage-grouse populations have been described as those with seasonal movements of less than 10 km (6.2 mi; Connelly et al. 2000a, pp. 968–969), while birds in migratory populations may travel well over 100 km (62 mi) (Tack et al. 2012, p. 65). Despite the documentation of extensive seasonal movements in this species, dispersal (permanent rather than seasonal movement) abilities of sage-grouse to other areas are assumed to be low (Fedy et al. 2012, p. 1066; Tack et al. 2012, p. 65; Davis et al. 2014, p. 716). Sage-grouse dispersal is overall poorly understood and appears sporadic, if not rare (Service 2020, p. 12).

Range and Population Estimates

The Bi-State DPS of greater sage-grouse historically occurred throughout most of Mono, eastern Alpine, and northern Inyo Counties, California (Hall et al. 2008, p. 97), and portions of Carson City, Douglas, Esmeralda, Lyon, Mineral, and perhaps Storey County in Nevada (Gullion and Christensen 1957, pp. 131–132; Espinosa 2019, pers. comm.). The current range of the DPS in California is presumed to be reduced from the historical range (Leach and Hensley 1954, p. 386; Hall 1995, p. 54; Schroeder et al. 2004, pp. 368–369), but the extent of range loss is not well understood.

Current management of the Bi-State DPS employs Population Management Units (PMUs) for Nevada and California as tools for defining and monitoring sage-grouse distribution. The PMU boundaries represent generalized populations or local breeding complexes and were delineated based on aggregations of leks, known seasonal habitats, and telemetry data. Six PMUs were designated for the Bi-State DPS (from north to south): Pine Nut, Desert Creek-Fales, Bodie, Mount Grant, South Mono, and White Mountains (Figure 1; Table 1). These six PMUs represent a combined total of approximately 50 active leks (see Table 1 below; Service 2020, pp. 21–33). Leks are considered either active (*e.g.,* two or more strutting males during at least 2 years in a 5-year period), inactive (*e.g.,* surveyed three or more times during one breeding season with no birds detected and no sign (*e.g.,* droppings) observed), historical (*e.g.,* no strutting activity for 20 years and have been checked according to State protocol at least intermittently), or unknown/pending (*e.g.,* sign was observed, and one or no strutting males observed, or a lek that had activity the prior year but was not surveyed or surveyed under unsuitable conditions during the current year and reported one or no strutting males).

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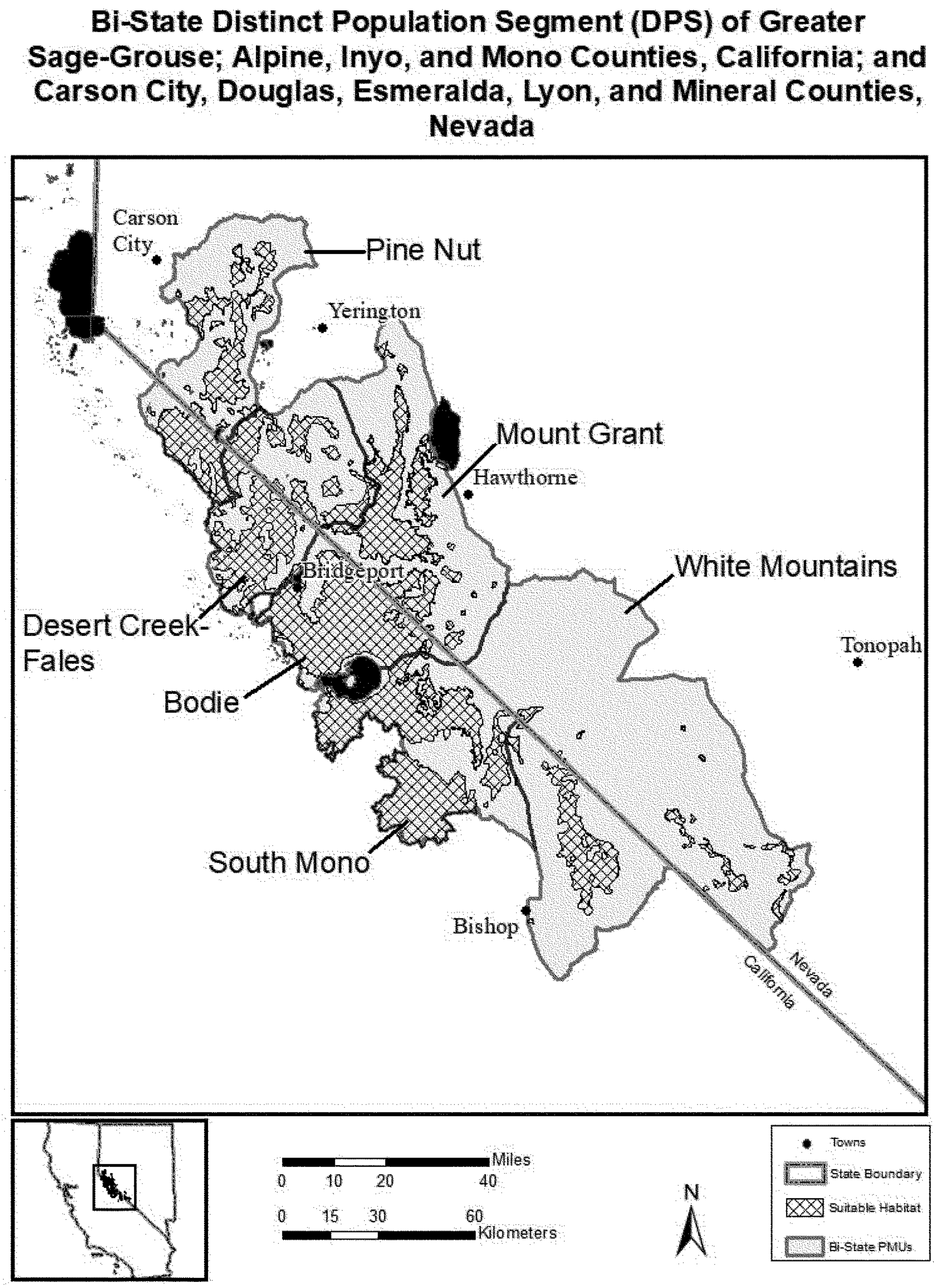

Figure 1. Population management units of the Bi-State DPS of the greater sage-grouse. The solid line shows the border of the management unit as defined by managing agencies, and the hatched line is suitable habitat within the units.

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TABLE 1—BI-STATE DPS PMUS, PMU SIZE, ESTIMATED SUITABLE SAGE-GROUSE HABITAT, AVERAGE NUMBER OF LEKS, AVERAGE NUMBER OF ACTIVE LEKS, AND RANGE OF MAXIMUM MALES ON LEKS WITHIN EACH PMU (2003–2018)

[Number pairs in parentheses are lower and upper limits of the 95 percent credible interval. Area values for "Total Size" and "Estimated Suitable Habitat" may not sum due to rounding]

PMU	Total size in hectares (acres) (*)	Estimated suitable habitat in hectares (acres) (**)	Average number of leks (***)	Average number of active leks (***†)	Range in maximum male counts (****)
Pine Nut	232,440 (574,372)	77,848 (192,367)	7.3 (2.0, 9.0)	1.8 (0.3, 4.7)	0–67
Desert Creek-Fales ††	229,858 (567,992)	105,281 (260,155)	12.8 (8.3, 15.0)	6.8 (5.0, 9.7)	61–220
Mount Grant ††	282,907 (699,079)	45,786 (113,139)	9.6 (5.0, 11.0)	4.4 (1.3, 7.0)	12–220
Bodie††	141,490 (349,630)	105,698 (261,187)	17.3 (12.3, 20.0)	13.1 (9.7, 16.7)	137–512
South Mono	234,508 (579,482)	138,123 (341,311)	15.6 (12.3, 19)	13.3 (11.0, 16.7)	172–418
White Mountains	709,768 (1,753,875)	53,452 (132,083)	2 + (not available)	2 + (not available)	Not available
Total (all PMUs combined).	1,830,972 (4,524,430)	526,188 (1,300,238)	64.6 (41.9, 76.0)	41.4 (29.3, 56.8)	427–1,409

* BSLPG (2004, pp. 11, 32, 63, 102, 127, 153).
** Bi-State TAC (2012, unpublished data); BLM (2014, unpublished data).
*** Derived from Mathews et al. 2018, Table 6 and Figure 17.
**** Derived from NDOW and CDFW lek databases. Low and high counts occurred in 2008 and 2012, respectively. However, there was variation in annual peak male counts across PMUs; therefore, column does not sum to total.
† Active—two or more strutting males during at least 2 years in a 5-year period.
†† Part of the North Mono population segment in some early population analyses.

Sage-grouse populations in the Bi-State area appear to be isolated to varying degrees from one another (Casazza et al. 2009, entire; Oyler-McCance and Casazza 2011, p. 10; Tebbenkamp 2012, p. 66; Oyler-McCance et al. 2014, p. 8; Tebbenkamp 2014, p. 18). Birds in the White Mountains PMU as well as those in the South Mono PMU are largely isolated from sage-grouse populations in the remainder of the Bi-State DPS (Casazza et al. 2009, pp. 34, 41; Oyler-McCance and Casazza 2011, p. 10; Tebbenkamp 2012, p. 66). Traditionally, the Pine Nut PMU was presumed isolated; however, recent data show birds are capable of moving south into the Sweetwater Mountains in the Desert Creek-Fales PMU and even further south into the Bodie PMU (USGS 2014b, entire). It is not apparent that birds leaving the Pine Nuts are returning. While adults are unlikely to switch breeding populations, it is likely that genetic material is transferred among these northern populations through the natural movements of young of the year birds, as long as there are established populations available in which to emigrate. However, fine-scale genetic differentiation among sage-grouse populations is at a relatively small geographic scope (approximately 10 km (6 mi)), suggesting dispersal among populations is highly restricted (Jahner et al. 2016, pp. 8–9).

Two independent genetic evaluations have concluded there are three or four (Oyler-McCance et al. (2014, p. 8) or five (Tebbenkamp 2014, p. 18) unique genetic clusters in the Bi-State area. The latter study did not evaluate the Pine Nut population (Pine Nut PMU), which has been found to be unique (Oyler-McCance et al. 2014, p. 8). Based on this information, we presume that there are likely three to six populations or groups of birds in the Bi-State area that largely operate demographically independent of one another.

Four separate statistical approaches to assessing the population trend of the Bi-State DPS have been conducted, with two of these approaches being repeated following additional years of data collection. The four approaches are: (1) Connelly et al. 2004; (2) WAFWA 2008, (3) Garton et al. (2011 and 2015); and (4) U.S. Geological Survey (USGS) 2014, 2018, and 2019 (Coates et al. 2014, Coates et al. 2018, Mathews et al. 2018; Coates et al. 2020). In 2004, WAFWA conducted a partial population trend analysis for the Bi-State area (Connelly et al. 2004, chapter 6). The WAFWA recognizes four populations of sage-grouse in the Bi-State area, which represent the same overall extent delineated by the six PMUs described in the 2012 BSAP and this document. Two of the WAFWA populations (North Mono Lake and South Mono Lake) had sufficient data for trend analysis (Connelly et al. 2004, pp. 6–60 to 6–62). The North Mono Lake population encompasses the Bodie, Mount Grant, and Desert Creek-Fales PMUs, while the South Mono Lake population encompasses the South Mono PMU. The North Mono Lake population displayed a significant negative trend from 1965 to 2003, and the South Mono Lake population displayed a positive numerical trend, albeit not statistically significant, over this same period (Connelly et al. 2004, pp. 6–69 to 6–70). In 2008, WAFWA (2008, Appendix D) conducted a trend analysis on the same two populations identified above using a different statistical method for the periods from 1965 to 2007, 1965 to 1985, and 1986 to 2007. The trend for the North Mono Lake population, as measured by maximum male attendance at leks, was negative from 1965 to 2007 and 1965 to 1985, but variable from 1986 to 2007; results suggest an increasing trend beginning in about 2000. Results for the South Mono Lake population suggested a negative trend from 1965 to 2007, a stable trend from 1965 to 1985, and a variable trend from 1986 to 2007; these results also suggest a positive trend beginning around 2000.

In 2011, Garton et al. (2011, pp. 324–330) used a new approach to conduct a third trend analysis on the same populations used in the two previous WAFWA analyses. In this study, the average number of males per lek in the

North Mono Lake population declined by 35 percent and the average number of males per active lek declined by 41 percent from the 1965–1969 to 2000–2007 assessment periods (Garton et al. 2011, p. 324). Based on a reconstructed minimum population estimate for males from 1965 to 2007, the overall population showed irregular fluctuations between peaks in 1970 and 1987 of 520 to 670 males, with lows above 100 and no consistent long-term trend over the 40-year period. In the South Mono Lake population, the average number of males per lek increased by 218 percent from the 1965–1969 to 1985–1989 assessment periods but declined by 49 percent from the 1985–1989 to 2000–2007 assessment periods (Garton et al. 2011, p. 325). Based on reconstructed minimum male counts, the population showed no obvious trend through time with between 200 and 600 males attending leks. The average annual rate of change for both populations suggested that population growth has been, at times, both positive and negative over the past 40 years (Garton et al. 2011, pp. 324–330).

In 2015, the researcher updated this analysis by accumulating and analyzing several years of additional of data (Garton et al. 2015, entire). The updated estimates of population performance largely remained unchanged, while the outlook for persistence improved. For the North Mono Lake population, the estimated minimum number of males increased by 25 percent in 2013 as compared to 2007, while the probability of declining below a (researcher-defined) quasi-extinction threshold decreased (Garton et al. 2015, pp. 13–14). For the South Mono Lake population, the estimated minimum number of males decreased by six percent in 2013 as compared to 2007, although the probability of declining below the quasi-extinction threshold remained generally unchanged. For both populations, the predicted population size in 30 and 100 years increased in 2013 as compared to 2007 (Garton et al. 2011, pp. 376–377; Garton et al. 2015, p. 45). This approach suggests both of these populations will remain relatively small, as they have historically. Modeled weighted probabilities of either population declining below an effective population sizes of 50 individuals in 30 and 100 years are generally low (approximately 8 percent in 30 years and 22 percent in 100 years for both populations; Garton et al. 2015, p. 14).

In 2014, the USGS completed an analysis of population trends in the Bi-State area spanning the years 2003 to 2012 (Coates et al. 2014, entire). This analysis, termed an Integrated Population Model (IPM), integrates a variety of data such as lek counts and vital rates to inform an estimate of lambda (population growth) within the DPS. This analysis evaluated several populations in the Bi-State area including the Pine Nuts (Pine Nut PMU), Fales (California portion of the Desert Creek–Fales PMU), Desert Creek (Nevada Portion of the Desert Creek–Fales PMU), Bodie Hills (Bodie PMU), Parker Meadows (South Mono PMU), and Long Valley (South Mono PMU). It did not evaluate the populations in the Mount Grant or White Mountains PMUs due to data limitations. Results at that time suggested a stable trend in population growth across the entire Bi-State area between 2003 and 2012 (*i.e.,* both increasing and decreasing at an equal rate; Coates et al. 2014, p. 19). However, the trend in population growth was variable among populations (Coates et al. 2014, pp. 14–15).

Since the 2013 proposed rule and the 2015 withdrawal of the proposed listing rule, this analysis has been updated, once using a 13-year dataset spanning the years 2003 through 2015, again using 15 years of data spanning the years 2003 through 2017, and most recently using an approach that segmented the trends into three time intervals (Coates et al. 2018, entire; Mathews et al. 2018, entire; Coates et al. 2020, p. 8). The later approach was adopted to account for population cycling in sage-grouse; that is, regular periods of growth and decline naturally experienced by sage-grouse rangewide (Garton et al. 2011, p. 338). Indeed, it became apparent after analyzing the 13-year and 15-year datasets that the resulting estimates of population growth rates were being biased low due to an overrepresentation of down cycle years. To alleviate this bias, the latest trend analysis analyzes three time intervals that span one, two, and three cycles, with the start and stop points occurring in the troughs of a cycle. The three time intervals are 1995–2018, 2001–2018, and 2008–2018. Not all populations had sufficient historical data to evaluate all three time periods and thus analysis was constrained to one or two time periods depending on the population. The most recent analysis includes results from the Mount Grant and White Mountains PMUs, which were previously excluded due to insufficient data.

The results of the most recent iteration of the IPM suggests a general pattern of population cycling within an otherwise stable population across the Bi-State DPS with additional evidence that oscillations were influenced by drought conditions in recent years (Coates *et al.* 2018, pp. 250, 252; Coates et al. 2020, p. 27). Furthermore, variation among individual PMU trends was apparent. The credible intervals (CRIs) reported in this study represent the range of interannual variation in lambda; that is, while annual median population growth for the Bi-State DPS as a whole in the period 1995–2019 is 1.018 (or approximately a 2 percent annual increase), the CRI reported (0.737–1.418) represents the variation in estimated lambda as it cycles from low to high over the study period, rather than the error in the median estimate for any given year.

As discussed above, this analysis estimated that, across the Bi-State as a whole, estimated median population growth was 1.018 (CRI = 0.737–1.418) from 1995 through 2018, 0.989 (CRI = 0.677–1.343) from 2001 through 2018, and 0.988 (CRI = 0.704–1.304) from 2008 through 2018 (Coates et al. 2020, Table 3). More specifically, over the past decade only the Bodie Hills and Parker Meadows population demonstrated an average annual positive growth (lambda = 1.061 and lambda = 1.048, respectively). The remaining populations including Mount Grant (lambda = 0.989), Fales, (lambda = 0.965), Pine Nut (lambda = 0.835), Desert Creek (lambda = 0.938), Long Valley (lambda = 0.96), and the White Mountains (lambda = 0.85; Coates et al. 2020, Table 3) averaged slight negative growth, although in each case the 95 percent CRI overlapped 1. Additional analysis suggests that over the past 5 years performance of some individual leks in Long Valley, Fales, Bodie Hills, Mount Grant, and to a lesser extent Sagehen (a population in the South Mono PMU) have been trending (negatively) in a pattern that deviates from the Bi-State at large (Coates et al. 2020, Table 3). This analysis suggests that alternative factors (such as anthropogenic disturbance) and not climate or weather may be acting to influence these specific sites.

In general, these four approaches (with some being run more than once) suggest that the trend in population growth within the Bi-State has fluctuated over the past 40 years (both increased and decreased), but over the entire timeframe has remained relatively stable. It appears that some populations (Pine Nut, Mount Grant, Bodie and Desert Creek) display greater variation in population growth (both positive and negative) and that trends among populations are variable (WAFWA 2008, Appendix D; Garton et al. 2011, p. 324, Coates et al. 2020, p. 34). Differences in population trends across the same time periods in the newest study (compared to previous studies) may be due to the fact that the previous studies did not correct for the effects of population cycling (Coates et al. 2020, p. 30).

Two studies forecasted the probability that some populations would become extirpated. Garton et al. (2015, p. 41) used their reconstructed male counts to forecast future probabilities of population persistence assuming that past conditions persist into the future (a potentially unrealistic assumption). They conclude that the probabilities of declining below a quasi-extinction threshold (as defined by less than 50 breeding adults per population) were approximately 8 and 22 percent over the next 30 and 100 years, respectively, for both the North Mono Lake and South Mono Lake populations. Furthermore, Garton et al. (2015, p. 41) indicate that long-term persistence (as defined by more than 500 breeding adults per population, a standard number for persistence studies) for both core populations has an estimated 100 percent probability of dropping below this 500-adult threshold in the next 30 years. However, the researchers acknowledge the cyclic nature of sage-grouse populations and note that these populations have already been both above and below this mark in previous years, which is part of that natural cycling. Furthermore, model projections suggest that, both over the near term (30 years) and the long term, the North Mono Lake and South Mono Lake populations have a relative high probability of maintaining between 50 and 500 breeding adults. Thus, in these two core populations immediate genetic concerns (*e.g.,* inbreeding depression) are not apparent, but concern over maintaining long-term genetic and demographic viability remains.

Coates et al. (2020, p. 41; Table 1) estimated 10-year extirpation probability based on the number of runs of the IPM where populations went to zero. Probabilities of extirpation ranged greatly for individual PMUs and populations within the PMUs, with highest extirpation probabilities in the Pine Nuts PMU (69.7 percent), the White Mountains PMU (75.1 percent), and the Sagehen and Parker Meadows populations of the South Mono PMU (74.8 and 64.3 percent, respectively) (Coates et al. 2020, Table 1). The Bi-State DPS as a whole has a 1.1 percent extirpation probability in the next 10 years, and the Desert-Creek Fales PMU (9.0 percent), the Bodie Hills PMU (2.4 percent), and the South Mono PMU as a whole (3.8 percent), as well as its largest population (Long Valley; 7.9 percent) all have low probabilities of extirpation (Coates et al. 2020, Table 1). Some of these extirpation probabilities are lower than those calculated by Garton et al. (2015), likely because of differences in methods. The two studies also used different data sets, with Garton et al. (2015) using reconstructed male counts, and Coates et al. (2020) using multiple data sources for the IPM, including demographic and lek count data.

Thus, even though some populations in this most recent model have high probabilities of extirpation over the next ten years, the DPS as a whole is likely to persist over this time period. These extinction probabilities are created from continuing and forecasting past trends into the future, and thus likely do not reflect the effects of conservation measures started or completed in recent years.

Finally, the most recent population study included a PMU distribution analysis to examine short-term changes in population distribution across the Bi-State DPS. This analysis concluded that some parts of the Bi-State DPS are contracting, with the greatest contractions in acres of occupied habitat occurring in the Pine Nut, Fales, Sagehen, and White Mountains populations (Coates et al. 2020, p. 51–54). However, distributional area in the Bodie Hills is increasing (Coates et al. 2020, p. 54). As a whole, the Bi-State DPS showed some evidence of range contraction between 2008 and 2018, though the 95 percent CRI overlapped zero ((−0.07 [−0.19, 0.07]) (Coates et al. 2020, p. 51).

Following are brief accounts of each PMU.

(1) The Pine Nut PMU has the fewest sage-grouse (Median = 33; CRI = 0–73 individuals in 2018; Coates et al. 2020, p. 33) and the least number of active leks of the Bi-State PMUs. The population in the Pine Nut PMU has some level of connectivity with the Desert Creek-Fales PMU and potentially also with the Bodie and Mount Grant PMUs. The most significant impacts in this PMU are wildfire, invasive species, woodland encroachment, urbanization, and infrastructure.

Historically, a single lek in the northern portion of the Pine Nut Mountains (known as Mill Canyon Dry Lake) was the only known consistently active lek in this PMU. From 2000 through 2013, the average male attendance at the Mill Canyon Dry Lake lek was approximately 14 males (Bi-State TAC 2012, p. 17). Since 2013, activity on this lek has essentially ceased. An additional lek in the southern extent of the Pine Nut mountain range has periodically been reported but at this point is not considered active. Aerial surveys over the past few years typically detect birds in this area but actual strutting activity is uncertain. It is unclear if this southern lek has been abandoned, or if the original documentation just captured a rare event or simply misclassified random bird sightings for actual strutting activity. Over the past several years, two newly discovered lek sites in the Buckskin Range appear to be the only reliably active strutting grounds in this PMU (NDOW 2018, unpublished data). Both lek sites are small with two to five males apiece. The most recent results from the IPM suggests population growth in this PMU has declined on average six percent annually over the past decade (2008–2018; Median $\lambda = 0.835$; CRI = 0.234–1.94; Coates et al. 2020, p. 41).

Ongoing conservation efforts in this PMU include an acquisition of land containing high priority targets identified in the 2012 BSAP, which will help limit the effects of urban and exurban development. This 5,870 ha (14,500 ac) acquisition by the Carson City BLM has been approved and is anticipated to finalize in the spring of 2020. Other completed, ongoing, or planned conservation actions in the Pine Nut PMU include pinyon-juniper removal, horse gathers, removal of nonnative invasive plants, fuel reduction treatments, road closure, and fence removal (Bi-State TAC 2019, entire).

(2) The Desert Creek-Fales PMU straddles the Nevada-California border and contains two populations, one in each State. This PMU includes two breeding complexes: Desert Creek (Nevada) and Fales (California). The populations in the Desert Creek-Fales PMU have some level of connectivity with the Pine Nut PMU and potentially also with the Bodie and Mount Grant PMUs. The most significant impacts in this PMU are wildfire, invasive species (specifically conifer encroachment), infrastructure, and urbanization.

The NDOW uses data from six active leks to evaluate the trend and to tally maximum male attendance in the Desert Creek breeding complex. The long-term average male attendance is approximately 17.7 males per lek (Bi-State TAC 2017, p. 8). This average is influenced by one of these leks becoming inactive, with no males counted within the last 8 years. This lek might have moved locations, but this possibility remains unconfirmed. In 2012, a previously undocumented lek was discovered to the east of Nevada State Route 338 near Dalzell Canyon; 24

males were documented strutting on this lek. Over the last 7 years, this lek has remained active but counts have been small (<5). Three additional lek sites have also been discovered over the past 5 years. The most recent results from the IPM suggest population growth in this PMU has declined in the past decade. Estimated median population abundance in 2018 was 325 (CRI = 163–542; Coates et al. 2020, p. 34) individuals. Estimated median population growth from 2001 through 2018 was 0.939 (CRI = 0.348–1.499) and from 2008 through 2018 was 0.938 (CRI = 0.337–1.535; Coates et al. 2020, p. 34).

The Fales breeding complex is located in northern Mono County, California. It is composed of three active and three inactive leks. Two active leks are located near Sonora Junction, in proximity to the intersection of Highway 395 and California Highway 108, and one additional lek is located in the northeast corner of Mono County in the Sweetwater Mountains. No males have been documented on a previously occupied lek since possible activity in 2012 (CDFW 2014a, unpublished data; CDFW 2018, unpublished data). In 2018, peak male count on the two remaining leks was at a historic low of 16 males total. One of the two remaining leks may also potentially be affected by the recent Boot fire (2018) and the construction of a new outbuilding approximately 200 meters (218 yards) away. The most recent results from the IPM suggest population growth has been negative over the past decade, but evidence of decline is less robust than in other breeding areas, especially when considering the longer timeframes. Estimated median population abundance in 2018 was 121 (CRI = 54–208; Coates et al. 2020, p. 34) individuals. Estimated median lambda from 1995–2018 was 0.999 (CRI = 0.59–1.641), from 2001–2018 was 0.984 (CRI = 0.539–1.525), and from 2008–2018 was 0.965 (CRI = 0.544–1.397; Coates et al. 2020, p. 34). Overall, the combined Desert Creek and Fales subpopulation has declined 4.5 percent annually over the past 18 years (Coates et al. 2020, Table 3).

Completed, ongoing, and planned conservation measures in this PMU include pinyon-juniper removal, fence removal, road closures, livestock management (to reduce impacts to critical brood-rearing habitat), nonnative invasive plant removal, road closure, fence removal, and post-fire restoration (Bi-State TAC 2019, entire).

(3) The Mount Grant PMU is composed of three connected areas: Two high-elevation areas associated with Aurora Peak and the Wassuk Range (centered on Mount Grant), and one low-elevation area called Ninemile Flat (located in the East Fork Walker River valley) between the two high-elevation areas. This PMU is also connected with the Bodie PMU (a portion of the sage-grouse population in each PMU moves seasonally to the other). Surveys in the Mount Grant PMU have been sporadic due to difficulty accessing several locations and survey data collection has been influenced by apparent confusion over lek names and potential vagaries in lek locations. Woodland succession, and potentially to a lesser extent historical and current mining activity, has most negatively influenced bird distribution within the Mount Grant PMU (Bi-State TAC 2012, pp. 36–37). More recently, recreational OHV use has become a more prevalent activity under consideration for its influence on birds (Service 2020, p. 27).

The largest known lek in the Mount Grant PMU is located near Aurora Peak along the Nevada-California border, and it is generally considered the eastern extension of the Bodie PMU breeding complex. The high count of 94 males for this lek was recorded in 2006, with a low of 10 in 2013. Over the past 5 years, peak male counts have ranged between 14 and 41 individuals (NDOW 2018, unpublished data). Leks in the Wassuk Range have not been surveyed consistently due to lack of access, which requires aerial survey methods. In 2005 and 2006, a total of 19 and 33 males, respectively, were counted on five active leks in the Wassuk Range (NDOW 2009, unpublished data; Bi-State TAC 2012, p. 35). During 2012, on four leks surrounding Mount Grant, researchers counted a total of 139 birds (males and females) (BSLSP 2012, p. 13). In 2013, researchers counted 38 males on 3 leks, the largest of which contained 30 males, and over the past 4 years, total male counts have ranged between 8 and 35 across 3 to 5 leks, with the largest lek containing 23 males. However, these results are calculated from limited data due to access limitations and survey method. The most recent results from the IPM suggest population growth in this PMU has generally been stable over the past decade, largely mirroring the pattern across the Bi-State DPS overall. Estimated median population abundance in 2018 was 374 (CRI = 205–619; Coates et al. 2020, p. 34) individuals. Estimated median lambda from 2008 through 2018 was 0.989 (CRI = 0.551–1.536; Coates et al. 2020, p. 34).

Completed, ongoing, and planned conservation measures in this PMU include pinyon-juniper removal, sagebrush restoration, horse gathers (roundup and removal of wild horses on public lands), road closures, and fence removal (Bi-State TAC 2019, entire).

(4) The Bodie PMU contains one population (Bodie Hills), which is one of the two core (largest) populations for the Bi-State DPS. Most of the PMU is located to the east of Highway 395, but a small portion extends west of Highway 395 to the Sierra Nevada Mountains. Loss of historical sage-grouse range in the Bodie PMU has been most influenced by woodland succession (The Nature Conservancy 2009, entire; Bi-State TAC 2012, p. 30; USGS 2012, unpublished data). Significant stands of pinyon pine and to a lesser extent juniper occur at mid to low elevations on all flanks of the Bodie Hills as well as across the Sierra Nevada Mountains side of the PMU. Perennial water and meadow habitats in the Bodie PMU are generally privately owned and provide important sage-grouse habitat during the brood-rearing/summer season. While natural vegetation succession processes (woodland establishment)—in the absence of disturbance—have resulted in loss of sagebrush habitat that continues to fragment and isolate the population within this PMU, the extent of habitat loss and fragmentation attributable to land use change (urban development and agricultural conversion) appears minimal.

Approximately eight leks have been regularly surveyed in the Bodie PMU since the late 1980s with some locations being counted as far back as the 1950s. Additional active leks and numerous satellite leks (sites used sporadically in years of high sage-grouse abundance) have also been identified in the Bodie PMU. The majority of leks are located in the Bodie Hills east of Highway 395, but at least one long-term lek and several associated satellite leks occur west of the Highway. Since 1953, the long-term average total male attendance in the Bodie PMU is 192 (Bi-State TAC 2017, p. 11). The minimum count recorded was 64 males on 6 leks in 1998, and the maximum was 524 males on 14 leks in 2014.

The sage-grouse population in the Bodie PMU has no discernible long-term trend (Garton et al. 2011, p. 324; referred to as the Mono Lake population). The average number of males per active lek declined by 41 percent between 1965 and 2007, but since 1991 the minimum number of males counted has been trending upward (Garton et al. 2011, p. 324). Recent survey years are encouraging because they demonstrate a substantial increase in the peaks associated with the population fluctuations. These increasing peaks, coupled with the general increase in the number of males counted since the early 1990s, suggests the Bodie PMU may be moving toward a cycle that oscillates at generally higher numbers as compared to the other PMUs. The most recent results from the IPM suggest growth in this population has remained stable, with evidence of increase. Estimated median population abundance in 2018 was 1,521 (CRI = 1,181–1,941; Coates et al. 2020, p. 34) individuals. Estimated median lambda from 1995 through 2018 was 1.07 (CRI = 0.76–1.758), from 2001 through 2018 was 1.029 (CRI = 0.74–1.457), and from 2008 through 2018 was 1.061 (CRI = 0.783–1.471; Coates et al. 2020, p. 34). Changes in population from 1995 through 2018 indicate that sage-grouse numbers as of 2018 were approximately four times higher compared to the low point 24 years ago (Coates et al. 2020, p. 34).

Completed, ongoing, and planned conservation measures in this PMU include pinyon-juniper removal; conservation easements; fence modification and removal; road closure; post-fire rehabilitation; and sagebrush and brood-rearing habitat restoration (Bi-State TAC 2019, entire).

(5) The South Mono PMU comprises three generally discrete locations or breeding complexes: Long Valley, Parker Meadow, and Granite Mountain. In the South Mono PMU, sage-grouse were likely historically distributed in many of the same areas utilized today (BSLPG 2004, p. 162), although there has been an estimated reduction in sagebrush extent of approximately 13 percent (USGS 2012, unpublished data) due to woodland succession. In addition, loss and fragmentation of habitat due to other causes (infrastructure, wildfire, and water development) has likely altered sage-grouse occurrence in certain locations such as the Mono Basin and Adobe Valley. In Long Valley, there may be specific locations where distribution has been reduced, but these areas appear limited in extent and confined to peripheral locations within the breeding complex. Changes in the sage-grouse population size in the Parker Meadow and Granite Mountain portions of the PMU are unclear, but likely greater. The Granite Mountain and Adobe Valley area (north of Highway 120) contains an expanse of sagebrush habitat and has been known to support birds during severe winters as well as historically (USFS 1966, p. 4; BSLPG 2004, p. 161). However, no consistent use of Adobe Valley is currently occurring, and use of the Granite Mountain area is limited. This inconsistent use is presumed to be caused by the general lack of water and meadow habitat in the area, which has likely decreased in the past century. To the east of Adobe Valley in the vicinity of Pizona Creek, a potential connectivity corridor exists between populations in the South Mono and White Mountains PMUs. However, the vegetation within this corridor has apparently changed due to woodland succession, and an aerial survey suggests that current vegetation is not suitable sage-grouse habitat (BSLSP 2012, p. 36).

Although surpassed by the Bodie PMU in 2012, traditionally the South Mono PMU has had the highest estimated population size as compared to the other PMUs within the range of the Bi-State DPS. The Long Valley breeding complex includes at least 10 to 12 consistently active leks and associated satellite sites located along the upper Owens River drainage and the Crowley Lake Basin. The Granite Mountain breeding complex includes two inactive leks located in the Adobe Valley and two active leks located in the Sagehen Summit area. The Parker Meadow breeding complex includes one consistently active lek site located south of Parker Creek at the northwest end of the June Lake Loop Road. Both the Granite Mountain and Parker Meadow breeding complexes are small, with generally less than 10 strutting males per complex documented per year.

Long Valley represents the largest population in the South Mono PMU and, in conjunction with the Bodie PMU, these two PMUs represent the core populations of the Bi-State DPS. Sage-grouse have been counted in the Long Valley breeding complex since the early 1950s. Historical maximum male attendance counts occurred in 1962, 1963, 1986, and 2012 when 408, 405, 406, and 418 male were counted, respectively, on 6–7 leks (Bi-State TAC 2012, p. 44). The long-term average peak male attendance between 1953 and 2018 is approximately 200, counted on an average of 9 leks. The high count during this period was 418 males in 2012, and the low count was 130 males in 2019 (CDFW 2019, unpublished data). The population in Long Valley has demonstrated positive and negative growth rates over the past 40 years (Garton et al. 2011, p. 329), although fluctuations have been relatively tempered and the population trend appears generally stable based on these data. The most recent results from the IPM suggest growth in this population has declined on average approximately four percent annually over the past decade, with more evidence of decrease than increase and apparently deviating from the remainder of the DPS. Estimated median population abundance in 2018 was 818 (CRI = 614–1,053; Coates et al. 2020, p. 35) individuals. Estimated median lambda from 1995 through 2018 was 0.996 (CRI = 0.676–1.427), from 2001 through 2018 was 0.986 (CRI = 0.655–1.433), and from 2008 through 2018 was 0.96 (CRI = 0.68–1.361; Coates et al. 2020, p. 35).

Four leks are known to exist in the Granite Mountain breeding complex (Adobe, Gaspipe, Big Sand Flat, and Sagehen Summit). Estimated median population abundance in 2018 was 20 individuals (CRI = 0–75; Coates et al. 2020, Table 1). Estimated median lambda from 1995 through 2018 was 0.916 (CRI = 0.282–1.964), from 2001 through 2018 was 0.844 (CRI = 0.18–1.819), and from 2008 through 2018 was 0.834 (CRI = 0.222–1.658; Coates et al. 2020, Table 3). Sage-grouse have been known to occur in the Parker Meadow breeding complex area since the 1950s, although lek monitoring did not occur until 2002. One small lek is active, and on occasion, satellite sites have experienced strutting activity (CDFW 2012, unpublished data). Since 2002, a high count of 18 males occurred in 2018, and a low count of 3 males occurred in 2010 (Bi-State TAC 2012, p. 45; CDFW 2018, unpublished data). The most recent results from the IPM suggest growth in this population is generally stable. Estimated median population abundance in 2018 was 48 (CRI = 21–86; Coates et al. 2020, Table 1) individuals. Estimated median lambda from 2001 through 2018 was 0.968 (CRI = 0.254–0.7.16), and from 2008 through 2018 was 1.048 (CRI = 0.361–5.814; Coates et al. 2020, Table 3). While growth in this population has little influence on the South Mono PMU as a whole, Parker Meadows likely facilitated connectivity between the Bodie and South Mono PMUs historically and potentially still does so today.

In 2017, an experimental translocation program was initiated to bolster low numbers in the Parker Meadows population (Mathews et al. 2018, p. 7). Given its infancy, the efficacy of this program has not yet been determined. However, the recent high male lek count in 2018 (which excluded translocated males) offers some optimism as translocations in 2017 improved reproductive success and ultimately recruitment in 2018.

Apart from the translocation, completed, ongoing, and planned conservation measures in this PMU include pinyon-juniper removal, land acquisition, road closures, landfill removal, and fence modification and removal (Bi-State TAC 2019, entire).

(6) The White Mountains PMU is the southernmost PMU in the Bi-State DPS, encompassing the White Mountains along the border of Nevada and California. It extends from the Candelaria Hills and Truman Meadows areas in the north to California Highway 168 in the south and from California Highway 6 in the west to the Silver Peak Range, Nevada, in the east. Historical and current distributions of sage-grouse in the White Mountains are not well understood. The area is difficult to access and, due to elevation, heavy snow conditions are typical during the spring breeding season. In addition, the number, size, and activity of leks in the White Mountains are not well known due to infrequent and opportunistic surveys. Historical accounts in Esmeralda County, Nevada, suggest bird densities there have likely always been low.

Current impacts such as exurban development (*e.g.,* Chiatovich Creek area (BSLSP 2012, p. 38)), grazing, recreation, and invasive species may be influencing portions of the population and are likely to increase in the future, but current impacts are considered minimal due to the remote locations of most known sage-grouse use areas. Potential future impacts from infrastructure (power lines, roads) and mineral developments could lead to fragmentation of the remote, contiguous nature of the habitat if conservation efforts were not conducted.

There are currently two active leks in the Nevada portion of the White Mountains PMU. Both were discovered in 2012 and are relatively small with between zero and nine males documented per lek per year (NDOW 2018, unpublished data). Since 2016, no males have been detected at one of these sites.

The most recent run of the IPM suggests more evidence of decline than increase, although this estimate is derived from fairly limited data. Estimated median population abundance in 2018 was 45 (CRI = 9–86; Coates et al. 2020, p. Table 1) individuals. Estimated median lambda from 2008 through 2018 was 0.85 (CRI = 0.343–1.957; Coates et al. 2020, p. Table 3).

Completed, ongoing, and planned conservation measures in this PMU include conservation easements and horse gathers (Bi-State TAC 2019, entire).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

Our proposed rule described ''foreseeable future'' as the extent to which we can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. The Service since codified its understanding of foreseeable future in 50 CFR 424.11(d) (84 FR 45020). In those regulations, we explain the term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. The Service will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. The Service need not identify the foreseeable future in terms of a specific period of time. These regulations did not significantly modify the Service's interpretation; rather they codified a framework that sets forth how the Service will determine what constitutes the foreseeable future based on our long-standing practice. Accordingly, though these regulations do not apply to this determination for the Bi-State DPS of greater sage-grouse because it was proposed prior to their effective date, they do not change the Service's assessment of foreseeable future for the Bi-State DPS of greater sage-grouse as contained in our proposed rule and in this determination.

Analytical Framework

The Species Report documents the results of our comprehensive biological status review for the species, including an assessment of the potential threats to the species. The Species Report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the Species Report; the full report can be found at either Docket No. FWS–R8–ES–2018–0106 or Docket No. FWS–R8–ES–2018–0107 on *http://www.regulations.gov.*

In this determination, we used the three conservation biology principles of resiliency, redundancy, and representation to assess the viability of the Bi-State DPS (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we will consider the DPS' overall response to threats and the DPS' viability as a whole.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, the influence of those conditions on the species' overall viability, and the risks to that viability. Following are summary evaluations of 11 threats analyzed in the Species Report for the Bi-State DPS: Urbanization and habitat conversion (Factor A); infrastructure (Factor A); mining (Factor A); grazing and rangeland management (Factor A); nonnative invasive plants and native woodland succession (Factor A); wildfires and altered fire regime (Factor A); climate change, including drought (Factor A); recreation (Factor E); disease (Factor C); predation (Factor C); and small population size and population isolation (Factor E). We also evaluate the inadequacy of existing regulatory mechanisms (Factor D) on the magnitude of threats. Please see the Species Report (Service 2020, pp. 39–136) for a more detailed discussion of each threat.

In the Species Report, we also considered four additional threats: Renewable energy (Factor A), commercial and recreational hunting (Factor B); scientific and educational uses (Factor B); and contaminants (including pesticides) (Factor E). We concluded that though these threats are currently having some impact on individual sage-grouse and their habitat, their overall effect now and into the future is expected to be minimal. Therefore, we will not present summary analyses of those threats in this document but will consider them in our overall conclusions of impacts to the species. For full descriptions of all these threats and how they impact the species, please see the Species Report (Service 2020, pp. 63–124).

For the purposes of this assessment, we consider the foreseeable future to be the amount of time on which we can reasonably determine a likely threat's anticipated trajectory and the anticipated response of the species to those threats. For some threats impacting the Bi-State DPS, we consider the time for which we can reliably project threats and the anticipated response to be 30 years. This time period represents our best professional judgment of the foreseeable future conditions related to climate change, native woodland succession, nonnative invasive plants, and wildfire cycles, as well as the Bi-State DPS population cycles, probability of population persistence analyzed and described by Garton et al. (2015, entire), and regeneration time of sagebrush habitat. For other threats and the anticipated species response, we can reliably project impacts and the species response for less than 30 years, such as infrastructure, urbanization and habitat conversion, grazing and rangeland management, recreation, disease, and predation.

Urbanization and Habitat Conversion

Urbanization and habitat conversion (Factor A) have both direct and indirect effects on sagebrush habitat. In this section, we will discuss direct impacts to sagebrush habitat and to sage grouse populations. Indirect effects (such as those associated with infrastructure, increases in invasive plant species, and increases in domestic animals and wildlife predator species) will be addressed in later sections.

Traditional land use in the Bi-State area was primarily farming and ranching operations. These operations can have both beneficial and detrimental effects on sage-grouse conservation. Continuing farming and ranching operations have limited development of exurban subdivisions in the Bi-State area, but they have also affected the extent of remaining sagebrush through conversion to alternate vegetation types (such as pasture grass) (Service 2020, p. 35). The extent of impacts from the conversion of habitat depends on the amount of sagebrush lost, the type of seasonal habitat affected, and the arrangement of habitat lost (large blocks or small patches) (Knick et al. 2011, pp. 208–211).

While conversion of sagebrush vegetation communities to agricultural land continues to occur in the Bi-State area, the rate of this conversion remains difficult to quantify. Some reports state that conversion has lessened and that some of these lands are instead being sold and converted to low-density residential housing developments (Bi-State TAC 2012, pp. 18, 24, 41). Several studies have demonstrated that these increases in human population density could have strong effects on sage-grouse occupancy beyond the areas directly converted to human development. Sage-grouse extirpation was more likely in areas having a human population density of at least four people per 1 km^2 (10 people per 1 mi^2) (Aldridge et al. 2008, pp. 991–992). Increase in human populations from this moderate level did not infer a greater likelihood of extirpation, likely because much of the additional growth occurred in areas no longer suitable for sage-grouse (Aldridge et al. 2008, pp. 991–992). Additionally, human density is 26 times greater in extirpated sage-grouse areas than in the currently occupied range (Wisdom et al. 2011, p. 463). In modeling several measures of human population on greater sage-grouse persistence, including current population density, historical population density, and human population growth, the best predictor of sage-grouse extirpation was human population density in 1950 (Aldridge et al. 2008, p. 985). This finding suggests that human development has had long-term impacts on habitat suitability and sage-grouse persistence (Aldridge et al. 2008, pp. 991–992). Thus, even small increases in human population density can have a strong effect on sage-grouse populations.

Another indicator of human development pressure on sage-grouse can be inferred from existing sagebrush availability. To persist in an area, sage-grouse require a minimum of 25 percent sagebrush; a high probability of persistence required 65 percent sagebrush or more (Aldridge et al. 2008, p. 990; and Chambers et al. 2014, p. 12). When data were analyzed in 2014 across the Bi-State, no leks contained less than 25 percent sagebrush cover in the immediate area. However, 30 out of the 55 leks (55 percent) contained between 25 and 65 percent sagebrush cover, suggesting an intermediate probability of persistence (Chambers et al. 2014, p. 12). The remaining 25 leks (45 percent) contained greater than 65 percent sagebrush cover surrounding a lek site.

Historical and recent alterations, as well as ongoing conversion of sagebrush vegetation to support ranching operations and urban/exurban expansion, poses the greatest risk to persistence of sage-grouse in the Pine Nut, Desert Creek-Fales, and South Mono PMUs and to a lesser degree in the Bodie, and White Mountains PMUs (BSLPG 2004, pp. 24–169; Bi-State TAC 2012, pp. 18–46). Approximately 11 percent of suitable sage-grouse habitat in the Bi-State area occurs on private lands. In each PMU, sage-grouse home ranges include private lands that are critical to fulfilling annual habitat needs (Casazza 2009, p. 9), including a significant proportion of mesic areas (*e.g.,* upland meadows) within the range of the Bi-State DPS needed by sage-grouse during the late brood-rearing period. Sage-grouse are known to display strong site fidelity to traditional seasonal habitats, and loss or degradation of specific sites (especially brood-rearing habitat) can have negative population impacts.

The majority of local agency land in the South Mono PMU is owned by the City of Los Angeles and managed by the Los Angeles Department of Water and Power (LADWP). Many of these parcels are irrigated pasture, which provide important brood-rearing habitat to upwards 40 percent of the entire Bi-State DPS population. The LADWP is considering altering the extent to which these lands are irrigated. If realized, this potential additive stressor has the potential to negatively affect brood-rearing success (an influential demographic vital rate), given that the Long Valley population has demonstrated slightly negative population growth on average over the past 10 years. To address this concern, in 2019 LADWP provided a letter to the Service that reaffirms its prior commitment to allocate a sufficient amount of water to maintain sage-grouse habitat in Long Valley. Determining the amount of water needed to achieve this commitment will be informed by a collaborative, science-based approach (LADWP 2019, *in litt.*). The goal of LADWP's natural resource management is to employ Best Management Practices for land and water uses that maintain water supplies to the City of Los Angeles while protecting water quality, habitat, biodiversity, as well as species recognized under the ESA throughout the related watersheds. In 2014 (August 18, 2014), LADWP and their governing Board of Water and Power Commission approved a Conservation Strategy for the Bi-State DPS on their lands in Mono County, California. A component of this Strategy included commitments to maintain sage-grouse lekking, nesting, and brood rearing habitat. Consistent with this Strategy, LADWP has consistently managed the activities on their lands such as habitat restoration, livestock grazing, recreation, control of noxious and invasive weeds, fire suppression, infrastructure, and management of water in a manner that is compatible with the conservation of the Bi-State DPS. These past efforts and ongoing commitments will continue to provide benefits to conservation of the species. The remainder of private lands in the South Mono PMU is rangeland, although potential for commercial, residential, or recreational development exists.

Ongoing efforts to develop fee acquisition of properties or enroll them into conservation easements may help ameliorate current and anticipated effects of urbanization and habitat conversion. We estimate that approximately 10,415 ha (25,737 ac) of private land, which may provide suitable habitat for sage-grouse in the Bi-State DPS, are currently enrolled in various easement programs. The easements are targeted primarily at development and water rights and vary in length from 30 years to in perpetuity; thus, they can ameliorate the threat of development but do not necessarily ensure that habitat remains suitable. The majority of these easement lands are located in the Bodie PMU, with the remainder of easements occurring in the Desert Creek-Fales, South Mono, Pine Nut, and White Mountains PMUs. Of the approximately 60,326 ha (149,071 ac) of private land that may provide suitable habitat for sage-grouse within the Bi-State area, approximately 17 percent is under easements. An additional approximate 9,045 ha (22,352 ac) of previously private land within the Bi-State DPS has been acquired by State and Federal agencies over the past decade. In total, approximately 19,460 ha (48,089 ac) of land, either through conservation easements or acquisitions, has been substantially protected from urbanization challenges. These acres represent approximately 31 percent of total private lands containing suitable sage-grouse habitat across the Bi-State area. In addition, approximately 7,280 ha (18,000 ac) of lands identified as important by the 2012 BSAP have funding obligated and are working through the easement development process, with many of these efforts anticipated to be completed in a few years. An effort to acquire approximately 5,867 ha (14,500 ac) of additional lands in the Pine Nut PMU by the Carson City BLM has been approved but will likely not finalize until sometime in 2020. Combining the realized and reasonably anticipated efforts, approximately 57 percent of high-priority private lands in the Bi-State area will be protected.

Currently, 89 percent of the Bi-State DPS is Federal lands. On Federal lands, existing regulatory mechanisms protect sagebrush habitat from development. Approximately 54 percent of all lands within the sage-grouse Bi-State area is BLM-administered land; this includes approximately 1 million ha (2.5 million ac). The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) is the primary Federal law governing most land uses on BLM lands, and directs development and implementation of resource management plans (RMPs) that direct management at a local level. The sage-grouse is designated as a sensitive species on BLM lands in the Bi-State area (Sell 2010, pers. comm.). The BLM's objectives for sensitive species is two-fold: (1) To conserve and recover ESA-listed species and the ecosystem on which they depend so that ESA protections are no longer needed, and (2) to initiate proactive conservation measures that reduce or eliminate threats to species to minimize the likelihood of and need for listing of these species under the ESA (BLM 2008, p. 3).

The USFS manages approximately 35 percent of the land in the Bi-State area or approximately 600,000 ha (1.5 million ac). Management of activities on national forest system lands is guided principally by the National Forest Management Act (NFMA). The NFMA specifies that the USFS must have a land resource management plan (LRMP) (16 U.S.C. 1600) to guide and set standards for natural resource management activities on each National Forest or National Grassland. The greater sage-grouse is designated as a USFS Sensitive Species in the Intermountain (R4) and Pacific Southwest (R5) Regions, which includes the Humboldt-Toiyabe National Forest (Bridgeport and Carson Ranger Districts) and the Inyo National Forest in the Bi-State area. Designated sensitive species require special consideration during land use planning and activity implementation to ensure the viability of the species on USFS lands and to preclude any population declines that could lead to a Federal listing (USFS 2008, p. 21). In addition, sensitive species designations require analysis for any activity that could have an adverse impact to the species, including analysis of the significance of any adverse impacts on the species, its habitat, and overall population viability (USFS 2008, p. 21). The specific protection that sensitive species status confers to sage-grouse on USFS lands is largely dependent on LRMPs and site-specific project analysis and implementation.

These regulatory mechanisms prevent urban development on Federal lands. Through NFMA, LRMPs, Federal Land Policy and Management Act, RMPs, and the On-Shore Oil and Gas Leasing Reform Act (1987; implementing regulations at 36 CFR part 228, subpart E), land-managing agencies have the authority to manage, prevent, restrict, or attach protective measures to mineral extraction, wind development, and other energy permits on Federal lands. Thus, some habitat loss due to these developments may still occur on Federal land. Despite this, regulatory mechanisms in place are overall reducing the magnitude of threats associated with urbanization and habitat conversion.

Historical and recent conversion of sagebrush habitat on private lands for agriculture, housing, and associated infrastructure within the Bi-State area has likely negatively affected sage-grouse distribution and population extent in the Bi-State DPS, thus potentially influencing current and future recovery opportunities in the Bi-State area. These alterations to habitat have been most pronounced in the Pine Nut and Desert Creek-Fales PMUs and to a lesser extent in the Bodie, South Mono, and White Mountains PMUs. Although only a subset of the 11 percent of suitable sage-grouse habitat that occurs on private lands could potentially be developed, conservation actions on adjacent public lands could be compromised due to the significant percentage of late brood-rearing habitat that occurs on the private lands. Furthermore, the influence of land development and habitat conversion on the population dynamics of sage-grouse is greater than a simple measure of spatial extent because of the indirect effects from the associated increases in human activity. These threats are not universal across the Bi-State area, but localized areas of impacts have been realized and additional future impacts are anticipated. Currently, approximately 31 percent of total private lands containing suitable sage-grouse habitat across the Bi-State area are enrolled under an easement program or have been acquired by Federal and State agencies, and this number will increase to 57 percent when combining additional efforts that are ongoing and reasonably likely to occur.

Urbanization was not considered a significant threat at the time of the 2013 proposed listing rule. Currently, the effects of urbanization are having a minimal impact on the resiliency of populations within the Bi-State DPS. Absent any protections or conservation measures, the magnitude of impacts could increase into the foreseeable future as unprotected private lands become further fragmented. However, due to protections associated with regulatory mechanisms, and in particular because of efforts to acquire important private lands associated with the BSAP, we conclude that the magnitude of effects associated with this threat and its potential impacts on population resiliency should not increase to a detrimental level.

The BSAP (Bi-State TAC 2012, entire) includes measures to counter effects such as urbanization and habitat loss. Because we have determined that the partially completed and future conservation measures/efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions, above), we believe that urbanization and human disturbance is not a significant impact on the species within the foreseeable future.

Infrastructure

We characterize infrastructure as features that assist or are required for human development or an associated action. We focus on five infrastructure features that are apparent in the Bi-State area and that have been implicated in impacting sage-grouse: Three linear features (roads, power lines, and fences) and two site-specific features (landfills and communication towers).

Infrastructure can have direct impacts on sage-grouse, such as mortality through collision with power lines or fences, or direct impacts on sagebrush, such as habitat fragmentation or habitat loss. Fragmentation of sagebrush habitat has been cited as a primary cause of the decline of sage-grouse populations because the species requires large expanses of contiguous sagebrush (Service 2020, p. 45). Estimating the impact of habitat fragmentation caused by infrastructure on sage-grouse is complicated by the nonrandom placement of these features and by time lags in species response to habitat changes (Garton et al. 2011, p. 371), particularly since these relatively long-lived birds continue to return to altered breeding areas (leks, nesting areas, and early brood-rearing areas).

Roads are a linear feature on the landscape that can contribute to habitat loss and avoidance of areas close to roads, create barriers to migration corridors or seasonal habitats, and increase human disturbance in remote areas (Service 2020, p. 46). Additionally, roads can provide corridors for predators to move into previously unoccupied areas. For some mammalian and avian species (such as common ravens (*Corvus corax*)), dispersal along roads and other linear features like power lines has greatly increased their distribution (Forman and Alexander 1998, p. 212; Knight and Kawashima 1993, p. 268; Forman 2000, p. 33; Connelly et al. 2004, p. 12–3). Road networks also contribute to the spread of nonnative invasive plants via introduced road fill, vehicle transport, and road maintenance activities (Forman and Alexander 1998, p. 210; Forman 2000, p. 32; Gelbard and Belnap 2003, p. 426; Knick et al. 2003, p. 619; Connelly et al. 2004, p. 7–25). Direct mortality of sage-grouse from vehicle collisions does occur (Patterson 1952, p. 81; Wiechman and Reese 2008, p. 3), but mortalities are typically not monitored or recorded. Additionally, roads can have impacts on sage-grouse behavior. For example, roads within 7.5 km (4.7 mi) of leks negatively influence male lek attendance (Service 2020, pp. 46–47). The mechanism by which road presence reduces male lek attendance is not entirely clear, but chronic noise may contribute to these decreases. Male sage-grouse rely on acoustical signals to attract females to leks (Gibson and Bradbury 1985, p. 82; Gratson 1993, p. 692). Therefore, if noise interferes with mating displays, and thereby female attendance, younger males will not be drawn to the lek and eventually leks could become inactive (Amstrup and Phillips 1977, p. 26; Braun 1986, pp. 229–230).

In general, locations associated with mineral development (Mount Grant PMU), recreational activity (Bodie and South Mono PMUs), and major travel corridors (Desert Creek-Fales PMU) have the most significant daily road traffic. Our analysis of the best available data in the Bi-State area documents that 54 out of 55 known active or pending leks are within 3 km (1.8 mi) or less of an existing minor road (such as dirt two-track roads). Furthermore, of the 55 known active or pending leks, 64 percent (n=35) are within 5 km (3.1 mi) of paved secondary highways (Service 2013c, unpublished data).

An extensive network of roads and trails currently occurs throughout the range of the Bi-State DPS. In the Bi-State area, all Federal lands have restrictions limiting off-road vehicular travel. In addition, road closures and rehabilitation of redundant roads by USFS and BLM are occurring to benefit Bi-State DPS conservation (Service 2020, p. 49).

We anticipate limited additional road and trail development will occur within suitable and potentially suitable habitat in the Bi-State area based on recent land use plan amendments, USFS and BLM travel management plans, and our current understanding of travel management direction. However, because an extensive road and trail network already occurs throughout the Bi-State area and because roads are known to result in both direct and indirect impacts to sage-grouse, we anticipate some impacts to birds and leks in the future, although we are uncertain to what degree these potential impacts will affect populations in the Bi-State area.

Power lines can directly affect sage-grouse by posing collision and electrocution hazards (Braun 1998, pp. 145–146; Connelly et al. 2000a, p. 974). They can have indirect effects by decreasing lek recruitment, increasing predator presence, facilitating the invasion of nonnative invasive annual plants by creating soil conditions favorable to their spread, potentially acting as a barrier to movement, and ultimately negatively affecting population performance (Service 2020, pp. 50–52). Due to the potential spread of invasive species and facilitation of predator occurrence as a result of power line construction, the indirect influence power lines can have on vegetation community dynamics and species occurrence often extends out further than the physical footprint (Knick et al. 2011, p. 219). Recent research has demonstrated that power lines are influencing sage-grouse behavior, demographic vital rates, and population growth rates due to associated impacts from raven abundance and predation (Gibson et al. 2018, p. 17).

Power lines occur in all Bi-State PMUs, but the extent of exposure varies by location. Based on available data (generally restricted to transmission lines), we estimate approximately 210 km (130 mi) of existing power lines are present across suitable habitat in the Bi-State. Overall, approximately 21 percent of 55 active and pending leks in the Bi-State area are within 2 km (1.2 mi) or less of existing transmission lines and approximately 38 percent of active and pending leks are within 5 km (3.1 mi) or less of existing transmission lines (Service 2013c, unpublished data). This suggests a potential loss, due to sage-grouse avoidance, of approximately 25,200 ha (62,270 ac) of otherwise suitable habitat (Gillan et al. 2013, p. 307). These transmission lines have the potential to further negatively influence over 250,000 ha (617,700 ac) or approximately 47 percent of suitable habitat, assuming their presence leads to the increased presence of ravens and other predators (Gibson et al. 2018, p. 17). Given that the predator community population size likely fluctuates through time, the scale of this potential impact will likely vary. Therefore, we are uncertain to what degree these potential impacts will affect populations in the Bi-State area. Of ongoing concern, however, is the potential time lag in effects from construction of power lines, as ravens and other predators may not utilize those lines until several years after their construction.

We anticipate that while existing power lines will persist on the landscape in the future, new power lines will be limited to smaller distribution lines associated with expansion of urbanization on a portion of the private lands within and around the Bi-State area. Bi-State habitat is currently managed as a right-of-way avoidance area by Federal land managers, such that larger lines (>120 kilovolts) and associated facilities will not be authorized (outside of existing corridors; BLM 2016, p. 15; HTNF 2016, p. 13). In the Bodie PMU, one decommissioned power line has been removed (Bi-State TAC 2018).

Fences are used to delineate property boundaries and for livestock management (Braun 1998, p. 145; Connelly et al. 2000a, p. 974). The effects of fencing on sage-grouse include direct mortality through collisions, creation of predator perch sites, and habitat fragmentation (Service 2020, p. 55). Fences present a risk to sage-grouse in all Bi-State PMUs (BSLPG 2004, pp. 54, 80, 120, 124, 169) due to known fence collisions and their potential to degrade habitat quality.

Not all fences present the same direct mortality collision risk to sage-grouse. Collision risk factors include fencing design, landscape topography, and spatial relationship with seasonal habitats (Christiansen 2009, p. 2). Management methods can decrease the impact of fences on sage-grouse. Visual markers have been employed in some of the high-risk areas to make fences more readily seen by birds; this method does appear to substantially reduce mortality due to collisions. Markers have been installed on a total of approximately 101 km (63 mi) of fence across the Bi-State DPS since 2012. Recent land use plan amendments encourage evaluation of existing fences with respect to sage-grouse conservation and discourage new installations that may negatively affect sage-grouse and its habitat (BLM 2016, pp. 12, 15; HTNF 2016, p. 14).

Data on the total extent (length and distribution) of existing fences and new fence construction projects are not available for the Bi-State area. However, based on data contained within the *Greater Sage-grouse Bi-State Distinct Population Segment Forest Plan Amendment* (USFS and BLM 2014, p. 99), there is likely on the order of 650 km (400 mi) of existing fences across the entire DPS. While we expect fencing to continue and possibly expand in the future within every PMU in the Bi-State area, efforts associated with conservation and regulatory mechanisms are currently ongoing (and expected to continue into the future) to ameliorate some of their impacts (Bi-State TAC 2012, p. 5; BLM 2016, pp. 12, 15; HTNF 2016, p. 14). While direct mortality through collision may be minimized by these approaches, indirect impacts caused by predation and other forms of habitat degradation may remain. The overall severity of these impacts to the Bi-State DPS throughout its range is not known, but based on the best available data the impacts are widespread but minor.

Millions of birds are killed annually in the United States through collisions with communication towers (including cellular towers) and their associated structures (*e.g.,* guy wires, lights) (Shire et al. 2000, p. 5; Manville 2002, p. 10), although most documented mortalities are of migratory songbirds. In a comparison of sage-grouse locations in extirpated areas of their range (as determined by museum species and historical observations) and currently occupied habitats, proximity to cellular towers had a strong correlation with likelihood of extirpation, and the distance to cellular towers was nearly twice as far from grouse locations in currently occupied habitats than extirpated areas (Wisdom et al. 2011, p. 463). However, there was no information as to whether the towers were a factor in the extirpation of those areas, or if their presence was linked to other threats in those areas (Wisdom et al. 2011, p. 467).

Within the range of the Bi-State DPS, approximately eight communication towers have been constructed in the past decade (Federal Communications Commission (FCC) 2018, unpublished data); each PMU has at least one such facility located within occupied sage-grouse habitat. These eight sites are likely an underrepresentation of the actual number of tower sites within the Bi-State area, as tower facilities shorter than 61 m (199 ft.) above ground level are not required to register with the FCC

(FCC 2018, unpublished data). We are unable to determine if any sage-grouse mortalities have occurred as a result of collisions with registered or unregistered communication towers or their supporting structures, as most towers are not monitored, and those that are monitored lie outside the range of the species (Kerlinger 2000, p. 2; Shire et al. 2000 p. 19).

Based on regulatory mechanisms associated with existing land use plans as well as existing land designations (wilderness and wilderness study areas), which significantly restrict new communication site development, we do not expect many new facilities on federally managed land in the Bi-State area (BLM 1993, p. 18; BLM 2016, p. 13; HTNF 2016, pp. 42–43). However, we anticipate that existing communication towers will remain in place and potentially new communication towers will be added at existing tower sites. Typically, rights-of-way grants afforded these facilities are for 30 years, and would likely be renewed indefinitely. It is also probable that new communication towers will be developed on non-federally managed lands along existing Federal Highways and State Routes. Thus, future communication tower placements will most likely affect the Desert Creek-Fales and South Mono PMUs, potentially affecting sage-grouse habitat in those locations.

Municipal solid waste landfills and associated roads contribute to increases in synanthropic predators (predator species adapted to conditions created or modified by people) (Knight et al. 1993, p. 470; Restani et al. 2001, p. 403; Webb et al. 2004, p. 523). One landfill exists in the Bi-State area. The Benton Crossing Landfill in Mono County is located north of Crowley Lake in Long Valley on a site leased from the LADWP. Common ravens and California gulls (*Larus californicus*) heavily use the landfill (Coates 2008, pers. comm.; USGS 2017, p. 17). Sage-grouse nest success in Long Valley (South Mono PMU) was lower than in other PMUs within the Bi-State area (Kolada et al. 2009b, p. 1344), which may be attributable to increased avian predators subsidized by landfill operations (Casazza 2008, pers. comm.; USGS 2017, p. 74; Coates et al.. 2018, p. 256). At this time, the future closing of the landfill appears probable, as LADWP has stated that they do not intend to renew the lease and Mono County has been funding planning studies for relocation, but any action on relocation is unlikely before the lease expires in 2023.

In the Bi-State area, linear infrastructure impacts each PMU both directly and indirectly to varying degrees. Existing roads, power lines, and fences may degrade sage-grouse habitat and contribute to direct mortality through collisions. In addition, roads, power lines, and fences influence sage-grouse use of otherwise suitable habitats adjacent to current active areas, increase predators, and increase invasive plants. The impact caused by these indirect effects extends beyond the immediate timeframe associated with the infrastructure installation. Across the entire range of the greater sage-grouse, the mean distance to highways and transmission lines for extirpated populations was approximately 5 km (3.1 mi) or less (Wisdom et al. 2011, p. 463). In the Bi-State area, 64 percent of active or pending leks are within 5 km (3.1 mi) of highways, and approximately 38 percent are within this distance to existing transmission lines (Service 2013c, unpublished data). The similarity apparent between these Bi-State DPS lek locations and extirpated greater sage-grouse populations suggests that persistence may be influenced by their juxtaposition with these anthropogenic features.

The geographic extent, density, type, and frequency of linear infrastructure disturbance in the Bi-State area have changed over time. While new development of some of these features (highways) will likely not occur, other infrastructure features have the potential of increasing (secondary roads, power lines, fencing, and communication towers). Furthermore, while development of new highways is unlikely, road improvements are possible and traffic volume will likely increase, and in certain areas these actions may be more important than road development itself.

We concluded in the 2013 proposed listing rule that infrastructure impacts (particularly fencing, power lines, and roads) were a significant factor for proposing to list the DPS as a threatened species, and today, we affirm that impacts from infrastructure occur in various forms throughout the Bi-State DPS's range and are an ongoing threat impacting population resiliency across its range and degrading habitat both currently and into the future. This conclusion is based on a variety of range-wide impacts that are currently occurring and expected to continue or increase in the future that result in habitat fragmentation; limitations for sage-grouse recovery actions due to an extensive road network, power lines, and fencing; and a variety of direct and indirect impacts such as direct loss of individuals from collisions or structures that promote increased potential for predation. Collectively, these threats may result in perturbations that influence both demographic vital rates of sage-grouse (*e.g.,* reproductive success and adult sage-grouse survival) and habitat suitability in the Bi-State area.

Importantly, conservation efforts that address infrastructure impacts have continued to be implemented since publication of the proposed listing rule, including (but not limited to): Removing power lines; implementing both permanent and seasonal road closures; removing racetrack fencing; and the likely relocation of the landfill in Long Valley. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012, entire), infrastructure-related impacts are significantly reduced.

The BSAP (Bi-State TAC 2012, entire) includes measures to counter negative effects from infrastructure. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions, below), we believe that effects associated with infrastructure may no longer be considered a significant impact into the future.

Mining

Surface and subsurface mining for mineral resources (gold, silver, aggregate, and others) can result in direct loss of sagebrush habitat. Construction of mining infrastructure can result in additional direct loss of habitat from establishment of structures, staging areas, roads, railroad tracks, and power lines. Sage-grouse and their nests could be directly affected by crushing or vehicle collision. Sage-grouse also can be impacted indirectly from an increase in human presence, land use practices, ground shock, noise, dust, reduced air quality, degradation of water quality and quantity, and changes in vegetation and topography (Moore and Mills 1977, entire). However, whereas theoretical effects are relatively clear and logical, information relating sage-grouse response to mineral developments is not extensive.

Mineral development is classified as leasable (fluid) minerals (in the Bi-State area, this is limited to geothermal resource), saleable minerals (sand and gravel pits), and locatable minerals (precious metals). Through existing regulatory mechanisms, Federal managers have discretion to condition or deny proponents of leasable or saleable mineral projects, and existing land use management plans have provisions that significantly restrict the likelihood of these developments (BLM 1993, p. 18; BLM 2016, pp. 12–13; HTNF 2016, pp. 19–21). Locatable minerals are administered under the General Mining Act of 1872. Federal land managers have very limited ability to prevent or preclude these activities from occurring.

Mineral extraction has a long history throughout the Bi-State area. Mining continues today to a limited extent in all PMUs and is expected to continue into the future. Although mining occurs year-round in the Bi-State DPS, direct loss of key seasonal habitats or population disturbances during critical seasonal periods are of greatest impact. Currently, the PMUs with the greatest exposure are Bodie, Mount Grant, Pine Nut, and to a lesser degree South Mono (BSLPG 2004, pp. 89, 137, 178). There are currently several active Plans of Operations that overlap Bi-State sage-grouse habitat and thousands of active mining claims on Federal, State, and private lands. There is potential for additional mineral developments to occur in the Bi-State area in the future. While all PMUs have the potential for mineral development, based on current land designations and past activity, it appears the Pine Nut and Mount Grant PMUs are most likely to experience new activity (Service 2020, pp. 61–63). Currently operational mines are not within the core population areas of the Bi-State DPS, although existing inactive mining sites, exploration actions, and potential future developments could impact important lek complexes and population connectivity.

In general, potential exists for mining operations to expand both currently and into the future, but the scope of impacts from existing mining expansion is not considered extensive. We concluded in the 2013 proposed listing rule and reaffirm here that, by itself, mining is not currently considered a significant impact to the Bi-State population, though mining exploration continues, and mining activity could occur at any time in the future.

Conservation efforts that address the impacts from mining have continued to be implemented since publication of the proposed listing rule, such as reducing human-related disturbances (*e.g.,* road noise/traffic). The BSAP includes conservation actions targeting development and human disturbances that will reduce the minor or potential impacts from mining (Bi-State TAC 2012, entire). Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions, below), we believe impacts associated with mining in the Bi-State population area are not a reasonably anticipated concern into the future.

Grazing and Rangeland Management

Livestock grazing continues to be the most widespread land use across the sagebrush biome (Connelly et al. 2004, p. 7–29; Knick et al. 2003, p. 616; Knick et al. 2011, p. 219), including within the Bi-State area. Links between grazing practices and population levels of sage-grouse are still not well defined (Braun 1987, p. 137; Connelly and Braun 1997, p. 231). Depending on timing and intensity, grazing can have both positive and negative impacts to greater sage-grouse populations. Sage-grouse populations responded favorably to higher grazing levels after peak vegetative productivity, but declined when grazed earlier (Monroe et al. 2017, p. 1102). Livestock grazing can reduce the available food sources needed during breeding and brood-rearing periods (Braun 1987, p. 137; Dobkin 1995, p. 18; Connelly and Braun 1997, p. 231; Beck and Mitchell 2000, pp. 998–1000). But while some studies have reported grass height as important for sage-grouse nesting habitat, others have reported weak or no effects, and other studies concluded no influential effects of grass-related variables on nesting success (Service 2020, pp. 65–66). In the Bi-State area, studies have suggested that grazing, or more importantly maintenance of residual grass cover, may not influence nest success in the Bi-State area as much as in other regions (Kolada et al. 2009b, pp. 1343–1344; Coates et al. 2017a, p. 55). This may be because the most prevalent nest predator in the Bi-State area, the common raven, is potentially less influenced by grass cover than mammalian predators (Coates et al. 2008, entire). Studies suggest that a threshold may exist whereby grazing can occur without detriment to sage-grouse resources. We note, however, the specifics of this threshold remain uncertain (Service 2020, p. 66).

Potential negative effects of livestock grazing on the sagebrush ecosystem include reduced water infiltration rates, reduced cover of herbaceous plants and litter, compacted soils, and increased soil erosion (Braun 1998, p. 147; Dobkin et al. 1998, p. 213). These impacts change the proportions of shrubs, grasses, and forbs in affected areas, and increase the propensity for invasion by nonnative invasive plant species (Service 2020, p. 67). Additionally, as far back as the mid-1900s, livestock grazing has been implicated in facilitating the spread of cheatgrass (Leopold 1949, p. 165; Billings 1951, p. 112). Livestock grazing reduces invasion resistance by imposing a competitive disadvantage on native herbaceous understory species and altering soil properties (Reisner et al. 2013, p. 10). While livestock grazing has been used strategically in sage-grouse habitat to control some invasive weeds (Merritt et al. 2001, p. 4; Olsen and Wallander 2001, p. 30; Connelly et al. 2004, p. 7–49) and woody plant encroachment (Riggs and Urness 1989, p. 358), there is limited evidence that controlling established cheatgrass through grazing is feasible. Rest from grazing may, in fact, be a more effective strategy of building resistance to invasion into a site (Reisner et al. 2013, p. 10). Collectively, these studies suggest managed livestock grazing at moderate intensities in the Bi-State area may be benign or even beneficial to some seasonal sage-grouse habitats, but when grazing intensity exceeds this moderate use level, livestock grazing can have negative effects on sage-grouse habitat and individuals (Boyd et al. 2014, p. 60).

Historically, extensive rangeland management has been conducted by Federal agencies and private landowners to reduce shrub cover and improve forage conditions for livestock in the sagebrush-steppe ecosystem (Connelly et al. 2004, p. 7–28; Knick et al. 2011, p. 220; Pyke 2011, p. 534). Today, ongoing removal or control of sagebrush in the Bi-State area is limited. The BLM and USFS have stated that, with rare exceptions, they no longer convert sagebrush to other habitat types, and that future treatments shall maintain, improve, or restore Bi-State sage-grouse habitat (BLM 2016, p. 11; HTNF 2016, p. 16). Federal land managers currently focus on improving the diversity of the native plant community, reducing conifer encroachment, or reducing the risk of large wildfires. On private lands in the Bi-State area, our understanding of sagebrush treatments is limited. Known instances of the elimination of sagebrush by chemical and mechanical means are apparent, but their extent remains to be quantified. The ability to restore or rehabilitate overgrazed areas depends on the condition of the area relative to its site potential (Knick et al. 2011, p. 232). Active restoration is required where the native understory is reduced (Pyke 2011, p. 539). If an area has soil loss or invasive species, returning the native plant community may be impossible (Daubenmire 1970,

p. 82; Knick et al. 2011, p. 232; Pyke 2011, p. 539).

Infrastructure related to livestock management such as water developments (*e.g.,* springs, tanks, guzzlers) and fences in shrub-steppe habitats are common on public lands (Connelly et al. 2004, p. 7–35). Development of springs and other water sources can artificially concentrate domestic livestock and wild ungulates in mesic areas, thereby exacerbating grazing and trampling impacts to sage-grouse nesting and brood-rearing areas (Braun 1998, p. 147; Knick et al. 2011, p. 230). Diverting water sources can result in the loss of riparian or wet meadow habitat that sage-grouse depend upon as sources of forbs and insects. However, water developments can also be beneficial to sagebrush vegetation communities, as this practice can help distribute livestock to water troughs and away from riparian areas, minimizing concentrated impacts of livestock grazing.

In the Bi-State area, there are 149 grazing allotments identified across all PMUs. Of these, 122 are considered active allotments, encompassing approximately 73 percent of suitable sage-grouse habitat. Most grazed lands are managed by the BLM and USFS, although much of the meadow habitats are located on private lands (BSLPG 2004, entire). Several rangeland health assessments (RHAs) or their equivalent have been completed on 120 allotments (104 that are active) and have not been conducted on the remaining 29 allotments (18 that are active). While there are public allotments or portions of allotments exhibiting adverse impacts from current or historical livestock grazing (*e.g.,* vegetation condition or composition is generally less than desired), our understanding is the majority of allotments in the Bi-State area are in good condition (Axtell 2008, pers. comm.; Murphy 2008, pers. comm.; Nelson 2008, pers. comm. BLM 2014b, *in litt.;* Bi-State TAC 2017, pp. 31–33), and livestock grazing is generally thought to have a limited impact on sage-grouse habitat (Bi-State TAC 2012, entire). Livestock grazing will continue into the indefinite future within the Bi-State area at its current or slightly decreased level, and thus remain a discretionary action where Federal agencies have the ability to alter use when renewing grazing permits. Also, it appears that Federal land managers are moving in a direction that affords greater discretion to sage-grouse habitat needs when evaluating livestock management and the majority of allotments have or will have pending renewals and associated terms and conditions that consider sage-grouse habitat, including the establishment or placement of infrastructure (Nelson 2008, pers. comm.; BLM 2016, pp. 11–12; HTNF 2016, pp. 16–18).

In addition to domestic livestock, feral horses can negatively impact meadows and brood-rearing habitats used by sage-grouse, and these impacts can be more severe given horses cannot be managed on a seasonal basis (Connelly et al. 2004, p. 7–37; Crawford et al. 2004, p. 11). Horse presence may negatively affect sagebrush vegetation communities and habitat suitability for sage-grouse by decreasing grass cover, fragmenting shrub canopies, altering soil characteristics, decreasing plant diversity, and increasing the abundance of invasive cheatgrass. In areas utilized by both horses and cattle, it is unknown whether grazing impacts are synergistic or additive (Beever and Aldridge 2011, p. 286). The most substantial impacts from feral horses in the Bi-State area occur in the Pine Nut, Mount Grant, and White Mountains PMUs (Axtell 2008, pers. comm.; Bi-State TAC 2012, pp. 19, 37, 41), although they are also known to occur within the Bodie and South Mono PMUs. We are unaware of the specific severity and scope of impacts caused by feral horses on the Bi-State DPS and sage-grouse habitat, although localized areas of concern in all PMUs are apparent. Most important are probable impacts to mesic areas within the Pine Nut, Mount Grant, and White Mountains PMUs. Management of herd size by Federal agencies is an ongoing challenge as horse management is expensive and often controversial. Based on this understanding, we anticipate future impacts caused by wild horses to increase, especially as horse herds are growing by 20 percent annually. However, despite this increase, the threat will have a minor impact on sagebrush habitat.

Existing regulatory mechanisms such as BLM land management plans and USFS LRMPs further reduce the magnitude of threats associated with grazing and rangeland management. For example, the Central California Standards and Guidelines of the Bishop RMP provide additional direction for the management of permitted livestock grazing on public lands administered by the Bishop Field Office. Standards are set for soil, species, riparian, and water quality, and metrics by which the achievement of these standards could be measured were established. This enables BLM to manage livestock grazing to ensure that species such as sage-grouse are ''healthy and in numbers that appear to ensure stable to increasing populations; habitat areas are large enough to support viable populations or are connected adequately with other similar habitat areas.'' Additionally, the Carson City District Land Use Plan Amendment for the Nevada and California Greater Sage-grouse Bi-State Distinct Population Segment addresses conservation of the Bi-State area by providing specific direction to management of the DPS and its habitat, including grazing management and wild horse and burro management (BLM 2016, entire). Numerous land use allocations restrict or substantially limit new habitat and bird disturbances and identify Best Management Practices to further minimize allowable actions. For more details on plans that address the impacts of grazing and rangeland management, see the Existing Regulatory Mechanisms of the Species Report (Service 2020, pp. 124–136).

Analyzing the overall impacts of grazing is difficult, as there is little direct evidence linking grazing effects and sage-grouse population responses. Analyses for grazing impacts at landscape scales important to sage-grouse are confounded by the fact that almost all sage-grouse habitat has at one time been grazed and thus no ungrazed control areas exist for comparisons (Knick et al. 2011, p. 232). Overall, impacts from historic grazing and current rangeland management occur within localized areas throughout the Bi-State DPS's range, though it is more pronounced in some PMUs than others. Domestic livestock and feral horses have the potential to negatively affect sage-grouse habitats by decreasing grass cover, fragmenting shrub canopies, altering soil characteristics, decreasing plant diversity, and increasing the abundance of invasive plant species, although their impacts and management potential can differ. Grazing and domestic livestock management has the potential to result in sage-grouse habitat degradation, though there is some conflicting information on whether some of the impacts of grazing are positive or negative. The Pine Nut and Mount Grant PMUs may be most sensitive to impacts from grazing as both PMUs are generally lower in elevation and receive less precipitation, making their sagebrush habitat less resistant to withstanding changes. Across the remainder of the PMUs, localized areas of meadow degradation are apparent, and these conditions may influence sage-grouse populations, as meadows are essential for recruitment of young.

Overall, impacts from past grazing and rangeland management occur within localized areas in all PMUs, although impacts are more pronounced in some PMUs than others. We concluded in the 2013 proposed listing rule that grazing and rangeland management was a factor (albeit not significant) for proposing to list the DPS as a threatened species as a result of ongoing habitat degradation impacts that may affect sage-grouse habitat in the Bi-State area, resulting in an overall reduction in aspects of habitat quality (*e.g.,* fragmentation, lack of understory plants, increased presence of nonnative plant species), especially in the Pine Nut and Mount Grant PMUs. While we recognize that livestock and feral horses may negatively impact sage-grouse habitat, we affirm that it does not appear that this is a significant concern in the Bi-State area today.

Importantly, conservation efforts that address the impacts from grazing and rangeland management have continued to be implemented since publication of the proposed listing rule, including (but not limited to): (1) Completing drafts and beginning to implement the new BLM and USFS Land Use Plan amendments (U.S. Department of the Interior and USDA 2015, entire), which are a considerable improvement for conservation of the Bi-State DPS and its habitat; repairing watering facilities, irrigation structures, and fencing around natural riparian areas to control grazing activity; increasing monitoring and management of horse and burrow herds; and restoring meadow/riparian habitat in critical brood-rearing habitat areas. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012, entire), impacts from grazing and rangeland management are significantly reduced.

The BSAP (Bi-State TAC 2012, entire) includes measures to counter effects such as livestock and wild horse grazing. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions, below), we believe impacts associated with grazing and rangeland management are not a concern now or in the foreseeable future.

Nonnative Invasive Plants and Native Woodland Succession

Shifting vegetation communities within the Bi-State area are altering sagebrush habitat that supports sage-grouse. Nonnative invasive plants such as cheatgrass alter sagebrush community structure, composition, productivity, nutrient cycling, and hydrology (Vitousek 1990, p. 7). Nonnative plants may also cause declines in native plant populations through mechanisms such as competitive exclusion and niche displacement (Mooney and Cleland 2001, p. 5446). They can create long-term changes in ecosystem processes, such as altering fire cycles and other disturbance regimes; these changes can persist even after an invasive plant is removed (Zouhar et al. 2008, p. 33).

Nonnative plants degrade existing sage-grouse habitat, replacing vegetation essential to sage-grouse for food and cover (Connelly et al. 2000a, pp. 971–972; Miller et al. 2011, pp. 160–164). The presence of cheatgrass influences lek persistence, nest site selection, and ultimately population performance (Blomberg et al. 2012, p. 7; Knick et al. 2013, p. 1544; Lockyer et al. 2015, p. 791; Coates et al. 2016b, p. 12747). Nonnative plants affect sage-grouse habitat and population demographics both in the short term (*e.g.,* nest site selection, loss of forbs and associated insects) and in the long term (*e.g.,* population growth, sagebrush displacement and habitat fragmentation).

A variety of nonnative invasive plants are present within the Bi-State area, although cheatgrass is of greatest concern. Local managers and scientists consider cheatgrass to be a low-level threat across four PMUs (White Mountains, South Mono, Bodie, and Desert Creek-Fales), a moderate threat in the Mount Grant PMU, and a high threat in the Pine Nut PMU (Bi-State TAC 2012, pp. 19, 26, 32, 37, 41, 49). Areas of greatest concern are in the Pine Nut PMU where cheatgrass abundance is greatest and where there are restoration challenges following several recent wildfires. Averaged across the entire Bi-State, percent cover of cheatgrass is generally low (Peterson 2003, entire), and conversion to an annual grass dominated community is currently limited to only a few locations. Anecdotal reports suggest this assessment remains generally true, though it is apparent that the abundance and distribution of cheatgrass has increased over the past decade.

Efforts are ongoing to restore or rehabilitate sage-grouse habitat affected by nonnative plant species, but the techniques for accomplishing these efforts remain mostly unproven, experimental, and often logistically difficult (Pyke 2011, pp. 543–544). Regardless, restoration efforts such as localized weed treatments have been applied within all the Bi-State PMUs.

Based on our understanding and past experience with nonnative invasive species in the Great Basin Region, we anticipate that impacts from nonnative species will continue or increase into the future. According to a mapping of sagebrush habitats across the range of greater sage-grouse that categorized these habitats based on their resistance and resilience to disturbance, both resistance and resilience are low in the warm and dry sagebrush habitats contained within the Nevada portion of the Bi-State (Pine Nut, Mount Grant, and Desert Creek portion of the Desert Creek–Fales PMUs) and most of the South Mono PMU (Chambers et al. 2014, pp. 16–17). That is, these areas have lower productivity and higher susceptibility to cheatgrass or other invasive annual grass incursion and will therefore face greater restoration challenges should fire occur. In the wetter and cooler sagebrush habitats found in the White Mountains, Bodie, Fales portion of the Desert Creek—Fales PMUs, and high-elevation sites of the Mount Grant PMU, resilience and resistance were ranked as moderately high to high, implying these locations have greater productivity and are generally less suitable to invasive annual grass establishment (Chambers et al. 2014, p. 43).

In addition to nonnative plant invasions within sagebrush habitat, some native tree species are increasing in sagebrush habitat and impacting the suitability of the habitat for the various life processes of the sage-grouse. Pinyon-juniper woodlands are a native vegetation community that can encroach upon, infill, and eventually replace sagebrush habitat. The cause of this conversion from shrubland to woodland is debatable but may be due to a suite of causes acting in concert with active wildfire suppression including: Domestic livestock grazing (reduced competition from native grasses and forbs and facilitation of tree regeneration by increased shrub cover and enhanced seed dispersal), climatic fluctuations favorable to tree regeneration, enhanced tree growth due to increased water use efficiency associated with carbon dioxide fertilization, and recovery from past disturbance (natural and anthropogenic) (Miller et al. 2008, p. 10; Baker 2011, p. 200; Miller et al. 2011, pp. 167–169; Bukowski and Baker 2013, p. 560). Each of these factors have likely influenced the current pattern of vegetation in the Bi-State area today and have led to an estimated 40 percent decline in sagebrush extent due to woodland succession and isolation of sage-grouse populations across the DPS.

Land managers in the Bi-State area consider pinyon-juniper encroachment a substantial threat to sage-grouse because it impacts habitat quality, quantity, and connectivity, and increases the risk of avian predation to sage-grouse populations (BSLPG 2004, pp. 20, 39, 96; Bi-State TAC 2012, pp. 18–47). Previously occupied sage-grouse locations throughout the Bi-State area are thought to have been abandoned due to woodland succession (Bi-State TAC 2012, pp. 18–47). The extent of the conversion to pinyon-juniper woodland varies by PMU, with the South Mono PMU being the least impacted (approximately 13 percent loss) and the Pine Nut PMU being the most influenced (approximately 50 percent loss). The remainder of the PMUs (White Mountains, Mount Grant, Desert Creek-Fales, and Bodie) are each estimated to have experienced approximately a 40 percent loss of historical sagebrush vegetation to woodland succession. In total, over the past 150 years, an estimated 390,000 ha (963,000 ac) of sagebrush habitat has converted to woodland vegetation, resulting in a loss of availability of total sagebrush habitat in the Bi-State area (which is not synonymous with suitable sage-grouse habitat as presented in Table 1) from slightly over 1,000,000 ha (2,580,000 ac) in 1850 to approximately 650,000 ha (1,600,000 ac) today across the Bi-State DPS (USGS 2012, unpublished data).

In order to counter the impact of pinyon-juniper encroachment, treatments to thin or remove woodland species are ongoing. Recent research supports previous assertions that these treatments would expand sage-grouse habitat and ultimately be used successfully by birds (Sandford et al. 2017, p. 63; Severson et al. 2017, p. 53; Olsen 2019, pp. 21–22). Sage-grouse response to woodland encroachment has been negative to the incursion but in some instances responsive to treatment actions. Sage-grouse encountering pinyon-juniper communities coupled with the rate of movement through these communities negatively affected bird survival (Prochazka et al. 2017, p. 46); however, sage-grouse readily nested in conifer treatment sites after trees had been removed (Severson et al. 2017, p. 53). Woodland treatments increased suitable available breeding habitat and enhanced nest and brood success (Sandford et al. 2017, p. 63). Sage-grouse avoided pinyon-juniper communities across varying degrees of community dominance; this avoidance increased survival (Coates et al. 2017b, pp. 31–33). Removal of pinyon-juniper trees encroaching into sagebrush vegetation communities can increase sage-grouse population growth through improving juvenile, yearling, and adult survival as well as improving nest survival (Olsen 2019, pp. 21–22). This research found population growth was 11.2 percent higher in treatment than in control sites within 5 years of conifer removal. Therefore, woodland encroachment into occupied sage-grouse habitat reduces, and likely eventually eliminates, sage-grouse occupancy. However, treatment action to remove trees increases sagebrush habitat, and these habitats are used successfully by sage-grouse.

Prior to the development of the BSAP in 2012, approximately 18 woodland thinning or removal projects had been undertaken, removing approximately 5,454 ha (13,479 ac) of woodland (Bi-State TAC 2012, p. 5). Since this time, an additional 81 projects have been initiated, treating approximately 18,798 ha (46,450 ac). While it is premature to detect a population-level response of sage-grouse to these treatments in the Bi-State region, increases in occupied habitat and increases in nest and brood success as well as survival parameters are anticipated based on recent research finding a positive overall outcome for population performance and connectivity (Coates et al. 2017b, pp. 31–33; Sandford et al. 2017, p. 63; Severson et al. 2017, p. 53; Olsen 2019, pp. 21–22). Furthermore, preliminary analysis of marked birds in the Bi-State area demonstrates grouse use of these treatments and offers support for these research findings (Mathews et al. 2018, pp. 33–34). Implementation and planning of additional woodland treatment projects are also under way over the next several years covering tens of thousands of acres.

Using the best available data, we estimate that the current acres of conifer removal treatments is within the range of estimated acres of woodland expansion and, further, that these treatments will continue based on ongoing commitments provided by land managers to implement the BSAP.

Overall, we consider woodland succession to pose a substantial threat to the Bi-State DPS. However, we consider impacts from woodland succession to be reduced by conservation measures with a high degree of implementation and effectiveness, recognizing that restoring historical connectivity and preventing further loss of suitable habitat requires continued focused active management.

Both nonnative invasive plants and native woodland succession are impacting the sage-grouse and its habitat in the Bi-State area. In general, nonnative plants are not abundant throughout the Bi-State area, with the exception of cheatgrass that occurs in all PMUs and is most extensive and of greatest concern in the Pine Nut PMU. Cheatgrass is a nonnative annual species that will likely continue to expand throughout the Bi-State region in the future and increase the adverse impact that currently exists to sagebrush habitats and sage-grouse through outcompeting beneficial understory plant species and altering the fire ecology of the area. Land managers have had limited success preventing cheatgrass invasion in the West, and elevational barriers to occurrence are becoming less restrictive. The best available data suggest that future conditions that could promote expansion of cheatgrass will be most influenced by precipitation and winter temperatures (Bradley 2009, p. 200). Cheatgrass is a serious challenge to the sagebrush shrub community, and its spread will be detrimental to sage-grouse in the Bi-State area. In addition, the encroachment of native woodlands (particularly pinyon-juniper) into sagebrush habitats continues to occur throughout the Bi-State area. Currently, however, treatment actions are on par with the expansion rate.

Overall, invasive nonnative and native plants occur throughout the entire Bi-State DPS's range. We concluded in the proposed listing rule that their spread was a significant factor for proposing to list the DPS as a threatened species based on the extensive amount of pinyon-juniper encroachment and cheatgrass invasion that is occurring throughout the DPS's range, and the interacting impact these invasions have on habitat quality (*e.g.,* reduces foraging habitat, increases likelihood of wildfire) and habitat fragmentation. Today, we affirm that nonnative and native invasive species occur throughout the Bi-State DPS's range and are significant threats to the species both currently and in the future. We expect this threat will increase across the range into the future unless it is actively managed.

Several regulatory mechanisms identified in existing federal land use plans address the impact of nonnative invasive plants and native woodland succession, the BSAP (Bi-State TAC 2012, entire) includes measures to counter the effects of these threats. In the past few years, we have gained increased certainty about the effectiveness of removal efforts for pinyon-juniper woodland. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions, below), the threat of native woodland succession is being reduced, though it is still impacting sagebrush habitat throughout the DPS. Conservation measures are less effective at controlling and ameliorating the effects of nonnative invasive plants, and thus they will continue to affect sagebrush habitat into the foreseeable future.

Wildfires and Altered Fire Regime

Wildfire is the principal disturbance mechanism affecting sagebrush communities. The nature of historical fire patterns, particularly in big sagebrush, is not well understood; however, it was historically infrequent (Miller and Eddleman 2000, p. 16; Zouhar et al. 2008, p. 154; Baker 2011, pp. 189, 196). Most sagebrush species have not developed evolutionary adaptations such as re-sprouting and heat-stimulated seed germination found in other shrub-dominated systems, such as chaparral, that are exposed to relatively frequent fire events. Natural fire regimes and landscapes were shaped by a few infrequent large fire events; historical fire rotation was 50–200 years in mountain big sagebrush communities and 200–350 years in Wyoming big sagebrush communities (Baker 2011, p. 196; Bukowski and Baker 2013, pp. 556–558). In general, fire extensively reduces sagebrush within burned areas, and big sagebrush varieties, the most widespread species of sagebrush, can take decades to reestablish and even longer to return to pre-burn conditions (Service 2020, p. 79). While no specific studies have been conducted within the Bi-State area to inform our knowledge of fire rotation, we expect the pattern in Wyoming big sagebrush and mountain big sagebrush communities in the Bi-state area to be similar to those described above for the remainder of the species' range.

Both increases and decreases in the natural fire regime can have detrimental effects on sagebrush. When intervals between wildfire events become unnaturally long, woodlands can encroach into sagebrush communities as the prolonged interval between fires allows seedlings to establish and trees to mature (Miller et al. 2011, p. 167). Currently, active wildfire suppression continues to occur throughout the Bi-State DPS.

Conversely, the invasion and establishment of nonnative invasive annual grasses, such as cheatgrass and medusahead rye (*Taeniatherum caput-medusae)* can increase wildfire frequency within sagebrush ecosystems and negatively influence the likelihood of recovery (Zouhar et al. 2008, p. 41; Miller et al. 2011, p. 167; Balch et al. 2013, p. 178). Cheatgrass shortens historical fire patterns by providing an abundant and easily ignitable fuel source that facilitates fire spread and recovers within 1–2 years of a wildfire event, leading to a recurring wildfire cycle that prevents sagebrush reestablishment (Young and Evans 1978, p. 285; Eiswerth et al. 2009, p. 1324; Balch et al. 2013, pp. 180–181). It is difficult and usually ineffective to restore sagebrush after annual grasses become established due to the positive feedback with fire, invasive species seed bank establishment, and alterations to soil and hydrologic processes (Paysen et al. 2000, p. 154; Connelly et al. 2004, pp. 7–44–7–50; Pyke 2011, p. 539).

Fire can have direct impacts on sage-grouse and their habitat. If fire does not completely remove sagebrush, it can reduce suitable nesting habitat, herbaceous understory vegetation used for forage and cover by sage-grouse hens and chicks, and potentially insects used for feeding by chicks. Additionally, isolation and fragmentation of populations due to habitat losses from wildfire presents a higher probability of extirpation in disjunct areas (Knick and Hanser 2011, p. 395; Wisdom et al. 2011, p. 469). This is a concern within the Bi-State area, specifically throughout the Pine Nut and portions of the South Mono and Desert Creek-Fales PMUs where burned habitat may be influencing already small and disjunct populations. As areas become fragmented and isolated through disturbances such as wildfire, persistence may be hampered by the limited ability of individuals to disperse into areas that are otherwise not self-sustaining. Thus, while direct loss of habitat due to wildfire has been shown to be a significant factor associated with population persistence for sage-grouse (Beck et al. 2012, p. 452), the indirect effect posed by loss of connectivity among populations may greatly expand the influence of this threat beyond the physical fire perimeter (Knick and Hanser 2011, pp. 401–404).

Sagebrush recovery rates following wildfire are highly variable, and precise estimates are often hampered by limited data from older burns. Factors contributing to the rate of shrub recovery include the amount of and distance from unburned habitat, abundance and viability of seed in soil seed bank (sagebrush seeds are typically viable for one to three seasons depending on species), rate of seed dispersal, and pre- and post-fire weather, which influences seedling germination and establishment (Young and Evans 1989, p. 204; Maier et al. 2001, p. 701; Ziegenhagen and Miller 2009, p. 201). Full recovery to pre-burn conditions in mountain sagebrush communities ranges between 25 and 100 years, and in Wyoming big sagebrush communities potentially ranges between 50 and 120 years (Baker 2011, pp. 194–195). By 25 years post-fire, Wyoming big sagebrush typically has less than 5 percent pre-fire canopy cover (Baker 2011, p. 195).

Wildfire is considered a relatively high risk across all the PMUs in the Bi-State area due to its ability to affect large landscapes in a short period of time (Bi-State TAC 2012, pp. 19–49). Furthermore, the future potential of this risk is exacerbated by the presence of people, invasive species, and climate change. While numerous wildfires have occurred in the Pine Nut, and South Mono PMUs (fewer in the other PMUs) over the past 18 years, to date there have been relatively few large-scale events (Service 2020, Table 3). In general, current data also do not indicate an increase of wildfires in the PMUs over time with the exception of the Pine Nut PMU where fire occurrence is more frequent (Service 2018, unpublished data). Furthermore, cheatgrass has a more substantial presence in the Pine Nut PMU, which appears to mirror (much more than the rest of the Bi-State area) the damaging fire and invasive species cycle impacting sagebrush habitat across much of the Great Basin.

The loss of habitat due to wildfire across the West is anticipated to increase due to the intensifying synergistic interactions among fire, people, invasive species, and climate change (Miller et al. 2011, p. 184). The past- and present-day fire regimes across the sage-grouse's range have changed with a demonstrated increase of wildfires in the more arid Wyoming big sagebrush communities and a decrease of wildfire across many mountain sagebrush communities (Miller et al. 2011, pp. 167–169). Both altered fire regime scenarios have caused significant losses to sage-grouse habitat through facilitating conifer expansion at high-elevation interfaces and nonnative invasive weed encroachment at lower elevations (Miller et al. 2011, pp. 167–169). In the face of climate change, both scenarios are anticipated to worsen (Baker 2011, p. 200; Miller et al. 2011, p. 179), including in the Bi-State area. Predicted changes in temperature, precipitation, and carbon dioxide are all anticipated to influence vegetation dynamics and alter fire patterns, resulting in increasing loss and conversion of sagebrush habitats (Neilson et al. 2005, p. 157). Furthermore, climate scientists suggest that, in addition to the predicted change in climate toward a warmer and generally drier Great Basin, variability of annual and decadal wet-dry cycles will likely increase and act in concert with fire, disease, and invasive species to further stress the sagebrush ecosystem (Neilson et al. 2005, p. 152, Ault et al. 2014, p. 7538). The anticipated increase in suitable conditions for wildland fire will likely further interact with people and infrastructure. Human-caused fires have increased and are correlated with road presence across the sage-grouse range (Miller et al. 2011, p. 171).

Based on the best available information, approximately 117 wildfire events have affected approximately 83,859 ha (207,220 ac) of sagebrush habitat across the Bi-State area since 2000, but conversion of sagebrush habitat to a nonnative invasive vegetation community has been largely restricted (Pine Nut PMU withstanding). It appears that a lack of historical fire has facilitated the establishment of woodland vegetation communities and loss of sagebrush habitat. Both the ''too little'' and ''too much'' fire scenarios present challenges for the Bi-State DPS. The former influences the current degree of connectivity among sage-grouse populations in the Bi-State DPS and the extent of available sagebrush habitat, likely affecting sage-grouse population size and persistence. The latter, under current conditions, now has the potential to quickly alter substantial percentages of remaining sagebrush habitat. Restoration of sagebrush communities is challenging, requires many years, and may be ineffective in the presence of nonnative invasive grass species. Research in the Great Basin found that sage-grouse habitat features are unlikely to occur in many burned areas even 20 years post-restoration (Arkle et al. 2014, p. 15).

Several regulatory mechanisms target the potential impact of wildfires and altered fire regime. Within the Bi-State area, participants in the BSAP (Bi-State TAC 2012, entire) have treated areas to reduce the threat of wildfire by using broadcast burns and mechanical treatment (*e.g.,* fuel breaks and conifer removal projects). To lower the risk of wildfire, approximately 1,806 ha (4,462 ac) of fuels reduction treatments have been conducted to remove conifers (Bi-State TAC 2018, unpublished data). Additionally, the reseeding of 7,699 ha (19,025 ac) from past fires has been completed. The efficacy of these treatments to achieve desired results is generally unknown.

Overall, the threat of wildfire and the existing altered fire regime occurs throughout the Bi-State DPS's range. We concluded in the proposed listing rule that significant impacts would be expected to continue or increase in the future based on a continued fire frequency pattern that exacerbates pinyon-juniper encroachment into sagebrush habitat in some locations, but also an increased fire frequency in other locations that promotes the spread of cheatgrass and other invasive species that in turn can hamper recovery of sagebrush habitat. Within the Bi-State DPS, the continued reduced fire frequency exacerbates pinyon-juniper encroachment into sagebrush habitat in some locations. However, an increased fire frequency in other locations promotes the spread of cheatgrass and other invasive species that in turn can hamper recovery of sagebrush habitats in other locations. While it is not currently possible to predict the extent or location of future fire events in the Bi-State area, we anticipate fire frequency to increase in the future due to the increasing presence of cheatgrass, human footprint, and the projected effects of climate change.

The BSAP (Bi-State TAC 2012, entire) includes measures to counter effects such as wildfire ignition risks and catastrophic fire. Fuels reduction projects and rehabilitation efforts post-wildfire have been and will continue to be implemented into the future to address the potential impacts from wildfire, including (but not limited to): Conducting conifer (pinyon-juniper) removal and conducting weed treatments for invasive, nonnative plants such as cheatgrass. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions, below), we conclude that impacts due to the threat of wildfires and altered fire regime have been reduced since the time of the 2013 proposed listing rule. We expect that, into the future, continued implementation of the BSAP will further reduce the impacts of wildfire and altered fire regime.

Climate

In considering future climate projections for the Bi-State area, we analyzed multi-model ensembles that made use of multiple greenhouse gas emission scenarios. In general, downscaled climate change model predictions in the Bi-State area tend to agree on an increasing temperature regime (Cayan et al. 2008, pp. S38–S40; He et al. 2018, p. 11; Gonzalez et al. 2018, Chapter 25) and stable to increasing local precipitation, with a shift in timing of local precipitation events (Diffenbaugh et al. 2005, p. 15776; Cayan et al. 2008, p. S28; He et al. 2018, p. 14: Reich et al. 2018, p. 21). The environment will be relatively drier due to elevated temperature, increased rates of evapotranspiration, more precipitation falling as rain instead of snow, and more frequent and prolonged drought (Neilson et al. 2005, p. 150; He et al. 2018, pp. 9, 11, 16). The precipitation variables are an important predictor of sagebrush occurrence as well as to greater sage-grouse occurrence, as timing and quantity of precipitation greatly influences plant community composition and extent—specifically forb production, which in turn affects nest and chick survival and ultimately population performance (Blomberg et al. 2012, p. 7; Coates et al. 2018, p. 252). Impacts associated with climate change may increase the magnitude of threats impacting the Bi-State DPS, as its effects interact with other stressors such as disease, invasive species, prey availability, moisture, vegetation community dynamics, disturbance regimes, habitat degradation, and habitat loss (Service 2020, p. 89).

Downscaled climate change projections in the Great Basin and Eastern Sierra also predict acceleration in fire frequency, with fires potentially becoming larger and more severe, and fire seasons becoming longer (Service 2020, pp. 87–88). Furthermore, drought frequency and persistence are anticipated to increase (Ault et al. 2014, p. 7545; Reich et al. 2018, p. 31; Gonzalez et al. 2018, entire). In the Bi-State area, drought is a natural part of the sagebrush ecosystem. Sage-grouse population performance in the Bi-State region responds to alterations in annual precipitation (Coates et al. 2018, p. 252; Coates et al. 2020, p. 27). While there is variation among subpopulations, on average findings suggest a 50 percent increase in precipitation corresponds to a 15.5 percent increase in population growth the following year. Moreover, these results indicate that precipitation needs to be approximately 20 percent greater than average for population recovery following drought, consistent with results from the Great Basin in the absence of wildfire (Coates et al. 2016b, p. 12747; Coates et al. 2018, p. 255).

Sage-grouse are affected by drought through the loss of vegetative habitat components, reduced insect production (Connelly and Braun 1997, p. 9), and potentially exacerbation of West Nile virus (WNv) and predation exposure (Gibson et al. 2017, p. 177; Prochazka et al. 2017, p. 47; Coates et al. 2018, p. 255). Drought reduces vegetation cover (Milton et al. 1994, p. 75; Connelly et al. 2004, p. 7–18), potentially resulting in increased soil erosion and subsequent reduced soil depths, decreased water infiltration, and reduced water storage capacity. These habitat component losses can result in declining sage-grouse populations due to increased nest predation and early brood mortality associated with decreased nest and brood cover and food availability (Braun 1998, p. 149; Moynahan et al. 2007, p. 1781). Furthermore, there are known occasions where the reduced condition of brood-rearing habitat due to weather has resulted in little to no recruitment within certain PMUs (Bodie, Pine Nut) (Gardner 2009, pers. comm.; Coates 2012, pers. comm.).

Within the Bi-State area, several projects have been undertaken to improve meadows and riparian areas for sage-grouse that could help increase population resiliency in response to increasing frequency of drought. These projects include grazing exclosures, changes to grazing management plans, prescribed fires, invasive plant control, mechanical treatments, and conservation easements intended to improve the resiliency of meadow habitats on privately owned lands (Bi-State TAC 2018, unpublished data).

Climate change is not known to currently impact the Bi-State DPS to such a degree that the viability of the species is at stake, although climate change has been shown to influence the impact of drought and the annual water cycle and these in turn have been shown to influence grouse population performance in the Bi-State area (Coates et al. 2018, p. 251; Reich et al. 2018, pp. 31, 33). However, while it is reasonable to assume the Bi-State area will experience vegetation changes into the future (as presented above), we do not know the degree to which these changes will ultimately have impacts on the Bi-State DPS. An analysis conducted by NatureServe, which incorporates much of the information presented above, suggests a substantial contraction of both sagebrush and sage-grouse range in the Bi-State area by 2060 (Comer et al. 2013, pp. 142, 145).

Occurrence of cheatgrass has generally been restricted to elevations below approximately 1,700 m (5,500 ft.) above mean sea level (Bradley 2010, p. 202). More recently, this barrier appears less certain in the Bi-State area as cheatgrass occurs at elevations previously thought to be relatively unfavorable based on the grass's ecology. This situation suggests that few locations in the Bi-State area are immune to cheatgrass invasion. Climate change may strongly influence the spread of this species as the available climate data suggests changes in timing of precipitation and increasing winter temperatures favorable to this species (Bradley 2009, p. 200). Predictions on the timing, type, and amount of precipitation contain the greatest uncertainty. In the Bi-State area, model scenarios that result in the greatest expansion of cheatgrass suggest much of the area remains suitable to cheatgrass presence with some additional high-elevation sites in the Bodie Hills, White Mountains, and Long Valley becoming more suitable than they are today (Bradley 2009, p. 204). On the opposite end of the spectrum, model scenarios that result in the greatest contraction in cheatgrass range suggest low-elevation sites such as Desert Creek-Fales and Mount Grant PMUs become less suitable for this invasive species but high-elevation sites (Bodie and White Mountains PMUs), where habitat conditions are generally marginal today, become more suitable in the future.

Based on this information we assume that climate change (acting both alone and in concert with impacts such as wildfire and nonnative invasive species) could be pervasive throughout the range of the Bi-State DPS, potentially degrading habitat to such a degree that all populations would be negatively affected with some low-elevation sites or populations currently exposed to greater cheatgrass abundance (Pine Nut, Desert Creek-Fales, South Mono and portions of the Mount Grant PMUs). Therefore, given the scope and potential severity of climate change when interacting with other threats in the future, the overall impact of climate change to the Bi-State DPS at this time is considered moderate to high.

We concluded in the proposed listing rule that climate change will potentially act in combination with other impacts to the Bi-State DPS, further diminishing habitat and increasing population isolation, making the DPS more susceptible to demographic and genetic challenges or disease. Although no regulatory mechanisms are available that can ameliorate the effect of changing climate or increasing drought, ongoing implementation of various conservation measures in the BSAP increases the resilience of the habitat to the effects of threats exacerbated by climate change and drought, such as wildfire and invasive plants (*e.g.,* through removal of pinyon-juniper woodland). We expect that, into the future, continued implementation of the BSAP will further reduce the impacts of these threats associated with climate change.

Recreation

Recreational activities such as fishing, hiking, horseback riding, and camping, off-highway vehicle (OHV) use (including snowmobiles), and mountain biking occur throughout the range of the greater sage-grouse, including throughout the Bi-State DPS area. These activities can degrade wildlife resources, water, and land by distributing refuse, disturbing and displacing wildlife, increasing animal mortality, and decreasing diversity of plant communities (Boyle and Samson 1985, pp. 110–112).

The effects of OHV use on sage-grouse have not been directly studied (Knick et al. 2011, p. 219). However, sage-grouse avoidance of activities associated with development suggests they are disturbed by persistent human presence (Holloran 2005, pp. 43, 53, 58; Doherty et al. 2008, p. 194). Sage-grouse response to disturbance may be influenced by the type of activity, recreationist behavior, predictability of activity, frequency and magnitude, activity timing, and activity location (Knight and Cole 1995, p. 71). Disruption of sage-grouse during vulnerable periods at leks, or during nesting or early brood-rearing, could affect reproduction and survival (Baydack and Hein 1987, pp. 537–538).

Indirect effects to sage-grouse from recreational activities may include impacts to vegetation and soils and facilitation of the spread of invasive species. One study found long-term (2-year) reductions in sagebrush shrub canopy cover as the result of repeated OHV trips (Payne et al. 1983, p. 329). Increased sediment production and decreased soil infiltration rates were observed after disturbance by motorcycles and four-wheel drive trucks on two desert soils in southern Nevada; noise from these activities can also cause additional disturbance (Eckert et al. 1979, p. 395; Knick et al. 2011, p. 219; Blickley et al. 2012, p. 467). Unpaved roads fragment sagebrush landscapes and subsidize predators adapted to humans; they also provide disturbed surfaces that facilitate the spread of invasive plant species (Knick et al. 2011, p. 219).

Potential disturbance caused by non-motorized forms of recreation (fishing, camping, hiking, big game hunting, dog training) are most prevalent in the South Mono and Bodie PMUs. These PMUs are also exposed to tourism-associated activity centered on Mono Lake and the towns of Mammoth Lakes and Bodie. The exact amount of recreational activity or user days occurring in the area is not known; however, the number of people in the area appears to increase annually (Nelson 2008, pers. comm.; Taylor 2018, pers. comm.).

A 2012 assessment reported recreation and human disturbance to be low-level threats in the Bodie and Mount Grant PMUs but relatively high threats in the Pine Nut and South Mono PMUs (Bi-State TAC 2012, pp. 19, 32, 37, 49). To address these apparent challenges, across the Bi-State, vehicular travel is limited to designated roads and trails and development of new roads is largely restricted. In addition, organized OHV events are prohibited during specific dates and in specific habitats (breeding and winter) limiting the exposure of birds (BLM 2016, pp. 13–14; HTNF 2016, p. 43).

Currently, there are few quantifiable data available to assess the degree of the impacts of recreation. The level of recreational activity associated with a specific road, for instance, is not known even though anecdotal information suggests that the level of activity (OHV numbers) is generally increasing. All the PMUs are relatively close to urban centers; thus, we anticipate recreational activity will continue and likely increase. However, all public lands in the Bi-State restrict OHV use to designated roads and trails and existing land use plans afford management oversite of this activity, thereby lessening the likelihood of broad scale habitat degradation.

Overall, recreation occurs throughout the Bi-State DPS's range, although we do not have data that would indicate impacts to sage-grouse or their habitat are significant. We concluded in the proposed listing rule and reaffirm here that, by itself, recreation is not considered a significant impact at this time. However, if left unchecked, some forms of recreation could become a concern based on anticipated increases of recreational use within the Bi-State area in the future. Conservation efforts that address recreational impacts have continued to be implemented since publication of the proposed listing rule, including (but not limited to): Reducing human-related disturbances in high-use recreation areas (*e.g.,* installing sage-grouse educational signs), conducting seasonal closures of lek viewing areas, and implementing both permanent and seasonal road closures. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012, entire), impacts from recreation are significantly reduced.

The BSAP (Bi-State TAC 2012, entire) includes measures to counter effects such as human disturbance to the Bi-State DPS, including recreation-related impacts. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions, below), we believe impacts associated with recreation are not a concern into the future.

Disease

Sage-grouse are hosts for a variety of parasites and diseases (Thorne et al. 1982, p. 338; Connelly et al. 2004, pp. 10–4–10–7; Christiansen and Tate, 2011, p. 114). The disease of greatest concern to the Bi-State DPS is WNv, which can cause serious impacts to grouse species, potentially influencing population dynamics (Petersen 2004, p. 46). WNv has spread across North America since 1999 (Marra et al. 2004, p. 394). It is thought to have caused millions of wild bird deaths since its introduction, but most WNv mortality goes unnoticed or unreported (Ward et al. 2006, p. 101; Walker and Naugle 2011, p. 128). Sage-grouse are considered to have high susceptibility to WNv and high levels of mortality (Clark et al. 2006, p. 19; McLean 2006, p. 54).

Sage-grouse deaths resulting from WNv have been detected in 10 States—including in the Bi-State area—and in 1 Canadian Province (Walker and Naugle 2011, pp. 133, 135). Since 2002, mortalities have been documented annually. Mortality from WNv has been shown to cause population declines in populations throughout the West (Service 2020, pp. 106–107). Scientists have expressed concern regarding the potential for exacerbating WNv persistence and spread due to the proliferation of surface water features (Friend et al. 2001, p. 298; Zou et al. 2006, p. 1040; Walker et al. 2007b, p. 695; Walker and Naugle 2011, p. 140). WNv persists on the landscape after it first occurs as an epizootic, suggesting this virus will remain a long-term issue in affected areas (McLean 2006, p. 50).

The long-term response of different sage-grouse populations to WNv infections is expected to vary markedly depending on factors that influence exposure and susceptibility, such as temperature, land uses, and sage-grouse population size (Walker and Naugle 2011, p. 140). Small, isolated, or genetically limited populations are at higher risk as an infection may reduce population size below a threshold where recovery is no longer possible, as observed in an extirpated population in Wyoming (Walker and Naugle 2011, p. 140). Larger populations may be able to absorb impacts resulting from WNv as long as the quality and extent of available habitat supports positive population growth (Walker and Naugle 2011, p. 140). However, impacts from this disease may act in combination with other stressors resulting in reduction of population size, bird distribution, or persistence (Walker et al. 2007a, p. 2652). Small populations, such as the populations within the Bi-State area, may be at high risk of extirpation simply due to their low population numbers and the additive mortality WNv causes (Christiansen and Tate, 2011, pp. 125–126).

The documented loss of four sage-grouse to WNv in the Bodie (n=3) and Desert Creek-Fales (n=1) PMUs (Casazza et al. 2009, p. 45) has heightened our concerns about the potential impact of this disease in the Bi-State area. At that time, these disease-caused mortalities represented only 4 percent of the total sage-grouse mortalities observed in the Bi-State area, but additional mortality attributed to predation could have been due in part to disease-weakened individuals. Mortality caused by disease acts in a density-independent or additive manner. The fact that it can act independently of habitat and suppress a population below carrying capacity makes it a concern. Existing and developing models suggest that the occurrence of WNv is likely to increase throughout the range of the species, and, based on projected increases in temperature caused by changes in climate, occurrence in the Bi-State may also increase (Paz 2015, p. 3).

Based on our current knowledge of the virus, the relatively high elevations and cold temperatures common in much of the Bi-State area likely reduce the chance of a DPS-wide outbreak. However, warmer, lower elevation sites such as portions of the Mount Grant and Desert Creek-Fales PMUs may be more suitable for outbreaks. The impact on individual populations from WNv outbreaks may influence the dynamics of the Bi-State DPS as a whole through the loss of population resiliency and the associated challenges of recolonizing extirpated sites through natural emigration.

Climate change may also influence the spread of disease. Temperature and precipitation both directly influence potential for WNv transmission (Walker and Naugle 2011, p. 131). In sage-grouse, WNv outbreaks appear to be most severe in years with higher summer temperatures (Walker and Naugle 2011, p. 131) and under drought conditions (Epstein and Defilippo 2001, p. 105). Therefore, current climate change projections for higher summer temperatures, more frequent or severe drought, or both make more severe WNv outbreaks likely in low-elevation sage-grouse habitats where WNv is already endemic, and also make WNv outbreaks possible in higher elevation sage-grouse habitats that have been WNv-free due to relatively cold conditions.

The development or maintenance of anthropogenic water sources in the Bi-State area, some of which likely provide suitable conditions for breeding mosquitoes, potentially increases the likely prevalence of the virus above that which could be sustained naturally by existing water bodies such as streams and meadows. To partially ameliorate this concern, Federal land managers require livestock water troughs to be emptied when not in use (BLM 2016, p. 11; HTNF 2016, p. 17).

We concluded in the proposed listing rule, and reaffirm here, that by itself, WNv is not considered a significant impact at this time because it is currently limited by ambient temperatures that do not allow consistent vector and virus maturation. However, WNv could be a concern for the future if predicted temperature increases associated with climate change result in this threat becoming more consistently prevalent. No current regulatory mechanisms address the impacts of WNv. However, with continued implementation of conservation actions (WNv surveillance and mosquito abatement measures) associated with the BSAP (Bi-State TAC 2012, entire), the minor or potential impacts from WNv are reduced to the point that we find disease is not currently impacting the resiliency of the Bi-State DPS, nor do we expect it to impact the DPS in the foreseeable future.

Predation

Predation of sage-grouse is the most commonly identified cause of direct mortality during all life stages (Schroeder et al. 1999, p. 9; Connelly et al. 2000b, p. 228; Casazza et al. 2009, p. 45; Connelly et al. 2011a, p. 65). Major predators of adult sage-grouse include several species of diurnal raptors (especially the golden eagle (*Aquila chrysaetos*)), coyotes (*Canis latrans*), red foxes (*Vulpes vulpes*), and bobcats (*Lynx rufus*) (Hartzler 1974, pp. 532–536; Schroeder *et al.* 1999, pp. 10–11; Schroeder and Baydack 2001, p. 25; Rowland and Wisdom 2002, p. 14; Hagen 2011, p. 97). Juvenile sage-grouse also are killed by many raptors as well as common ravens, badgers, red foxes, coyotes and weasels (*Mustela* spp.) (Braun 1995, entire; Schroeder *et al.* 1999, p. 10). Nest predators include badgers, weasels, coyotes, common ravens, American crows, and magpies (*Pica* spp.); sage-grouse eggs have also been consumed by elk *(Cervus canadensis)* (Holloran and Anderson 2003, p. 309) and domestic cows (*Bovus* spp.) (Coates *et al.* 2008, pp. 425–426; Dinkins *et al.* 2013, p. 305). However, sage-grouse have co-evolved with a variety of predators, and their cryptic plumage and behavioral adaptations have allowed them to persist (Schroeder et al. 1999, p. 10; Coates 2007, p. 69; Coates and Delehanty 2008, p. 635; Hagen 2011, p. 96). Although many predators consume sage-grouse, none specialize on the species (Hagen 2011, p. 97). Generalist predators may still have a significant effect on ground-nesting birds, because unlike specialist predators, generalist predator numbers are independent of prey density (Coates 2007, p. 4).

Predation is typically the principal cause of nest loss, which is a key determinant in sage-grouse population dynamics (Schroeder et al. 1999, p. 15; Taylor et al. 2012, p. 342). Sage-grouse nest depredation can be total (all eggs destroyed) or partial (one or more eggs destroyed). However, hens abandon nests in either case (Coates 2007, p. 26). Nest success across the California portion of the Bi-State area is within the normal range, with some locations even higher than previously documented (Kolada 2009a, p. 1344; Mathews et al. 2018, p. 54). However, the lowest estimates occur in Long Valley (South Mono PMU; 21 percent; Kolada 2009a, p. 1344), which is of concern as this is a core population for the species in the Bi-State area and is also the population most likely exposed to the greatest amount of nest predators (Kolada et al. 2009b, p. 1344; Mathews et al. 2018, p. 53). The negative impact from reduced nesting success in this location is presumably being offset by other demographic statistics such as chick or adult survival (Service 2020, p. 116).

A number of factors have been reported to influence the density and diversity of predators, including agricultural development, landscape fragmentation, livestock presence, habitat alterations, and human populations, among others (Service 2020, p. 113). These factors have the potential to increase predation pressure on all life stages of sage-grouse by forcing birds to nest in less suitable or marginal habitats with no cover to shield them, and by increasing travel time through habitats where they are vulnerable to predation. Where sage-grouse habitat has been altered, the influx of predators can decrease annual recruitment into a population (Service 2020, p. 113).

Raven abundance has increased as much as 1,500 percent in some areas of western North America since the 1960s (Coates and Delhanty 2010, p. 244). Human-made structures in the environment increase the magnitude of raven predation, particularly in low-canopy cover areas, by providing ravens with perches and nesting substrate (Braun 1998, pp. 145–146; Coates 2007, p. 155; Bui 2009, p. 2). Reduction in patch size and diversity of sagebrush habitat, as well as the construction of fences, power lines, landfills, and other infrastructure (as discussed in *Infrastructure*) also are likely to encourage the presence of the common raven (Coates et al. 2008, p. 426; Bui 2009, p. 4; Howe et al. 2014, p. 41). High sage-grouse nest densities in small patches of quality habitat (which result from habitat fragmentation or disturbance associated with the presence of edges, fencerows, or trails) may increase predation rates by making foraging easier for predators (Holloran 2005, p. C37).

The presence of ravens is negatively associated with grouse nest and brood fate (Bui 2009, p. 27; Gibson et al. 2018, pp. 14–15). Raven abundance was strongly associated with sage-grouse nest failure in northeastern Nevada, with resultant negative effects on sage-grouse reproduction; an increase of 1 raven per 10-km (6-mi) survey transect was associated with a 7.4 percent increase in nest failure (Coates and Delehanty 2010, p. 243). In the Virginia Mountains (just north of the Bi-State DPS), ravens were the most common nest predator, accounting for almost 47 percent of nest depredations (Lockyer et al. 2013, p. 246).

Threats associated with livestock grazing and predation may interact. In general, all recorded encounters between livestock and grouse nests resulted in hens flushing from nests (Coates et al. 2008, p. 462), which could expose the eggs to predation. There is strong evidence that visual predators like ravens use hen movements to locate sage-grouse nests (Coates 2007, p. 33); this is a concern for the Bi-State DPS given that ravens are the primary predators of sage-grouse in the Bi-State area. Livestock may also trample nests and sagebrush bushes and seedlings, thereby impacting future sage-grouse food and cover (Connelly et al. 2004, p. 7–31). Additionally, the odds of common raven occurrence, a pervasive sage-grouse nest predator, increased by approximately 46 percent in areas where livestock were present (Coates et al. 2016a, p. 10). The presence of infrastructure might also increase the magnitude of predation; increased raven presence may be attributable to the presence of water developments and associated perching structures (windmills and fences) (Coates et al. 2016a, p. 10).

Predator removal efforts have sometimes shown short-term gains that may benefit seasonal survival rates, but there is limited support of these efforts influencing sustainable population growth (Cote and Sutherland 1997, p. 402; Hagen 2011, p. 9; Leu and Hanser 2011, p. 27; Dinkins et al. 2016, pp. 54–55; Peebles et al. 2017, p. 475). For example, raven removal has been shown to have a positive effect on nest success (Dinkins et al. 2016, p. 54); however, ultimate results on population growth rates are negligible or not as well understood. Removal of ravens from an area in northeastern Nevada caused only short-term reductions in raven populations (less than 1 year) as apparently transient birds from neighboring sites repopulated the removal area (Coates 2007, p. 151). Raven removal in one Wyoming study resulted in a 50 percent reduction in raven densities during 2008–2014, while non-removal sites saw a 42 percent increase in raven densities (Peebles et al. 2017, p. 476). The authors reported increases in lek counts following a 1-year lag during raven removal; however, other factors were also associated with increased lek counts in this study that included minimum temperatures and precipitation during the brood-rearing period.

As specified in the BSAP and associated project spreadsheet (Bi-State TAC 2012, entire), the participants have worked to reduce threats to sage-grouse in the Bi-State DPS from predators. Removal of infrastructure (*e.g.,* landfills, tall structures) may be a crucial step to reducing the presence of sage-grouse predators (Bui 2009, pp. 36–37; Leu and Hanser 2011, pp. 270–271). In the Bodie PMU, perching and nesting sites have been eliminated by infrastructure removal (*e.g.,* windmill, transmission line). In the Desert Creek/Fales PMU, 3 km (1.85 mi) of fence in the Sweetwater Summit area was fitted with perch deterrents. Additionally, nearly 24,281 ha (60,000 ac) of conifer-encroached sagebrush have been treated in the Bodie, Desert Creek/Fales, Pine Nut, Mount Grant, and South Mono PMUs to remove conifers and reduce perch sites for predators.

Overall, predation is currently known to occur throughout the Bi-State DPS's range. It is facilitated by habitat fragmentation and composition, infrastructure (fences, power lines, and roads) and other human activities that may be altering natural population dynamics in specific areas throughout the Bi-State DPS's range. The impacts of predation on sage-grouse can increase where habitat quality has been compromised by anthropogenic activities and ultimately influence population performance (Coates 2007, pp. 154, 155; Bui 2009, p. 16; Hagen 2011, p. 100). Landscape fragmentation, habitat degradation, and human populations have likely increased predator populations through increasing the ease of securing prey, and through human structures like landfills adding food sources. Other human structures can provide nest or den substrates for predator species. Certain sage-grouse populations are exhibiting deviations in vital rates below those anticipated, and the deviation may be related to predation. The populations with this issue are the Long Valley population (South Mono PMU), which is one of the two largest (core) populations in the Bi-State DPS, as well to the Desert Creek population (Desert Creek-Fales PMU) and the Pine Nut PMU. If assuming potential predation is connected to the deviations, the Bodie and White Mountains PMUs are likely least affected by predation.

At natural levels and in unaltered habitat, it is unlikely that predation would be a significant impact to the DPS, given that the sage-grouse have coevolved with a number of predators, and no predators specialize on sage-grouse. However, we recognize that, in concert with altered habitat, it may become an increasing concern in the future. As more habitats face development (including roads, power lines, and other anthropogenic features such as landfills, airports, and urbanization), we expect the risk of increased predation to spread, possibly with negative effects on the sage-grouse population trends. We concluded in the proposed listing rule, and reaffirm here, that, by itself, predation is not considered a significant impact at this time. There are no regulatory mechanisms addressing predation directly, but regulatory mechanisms and conservation efforts that indirectly influence predation have continued to be implemented since publication of the proposed listing rule, including (but not limited to): Removing and limiting structures that attract predators (*e.g.,* fencing, power lines), and conducting initial procedures to remove the landfill in Long Valley. With continued implementation of conservation actions associated with the BSAP (Bi-State TAC 2012, entire), impacts from predation are significantly reduced.

The BSAP (Bi-State TAC 2012, entire) includes measures to counter effects such as predation risks to the Bi-State DPS. Because we have determined that the partially completed and future conservation efforts will be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions, below), we believe that predation is not a concern into the future.

Small Population Size and Population Isolation

The Bi-State DPS is relatively small and both geographically and genetically isolated from the remainder of the greater sage-grouse distribution. All isolated populations of sage-grouse are more vulnerable to genetic, demographic, or stochastic events. However, available data indicate genetic diversity in the Bi-State area is currently high (Oyler-McCance and Quinn 2011, p. 18). Thus, we currently have no indication that genetic factors such as inbreeding depression, hybridization, or loss of genetic diversity are acting on the Bi-State DPS. However, populations in the Bi-State area have unique detectable qualities that allow differentiation from one another (Oyler-McCance et al. 2014, entire; Tebbenkamp 2014, entire). Also, the Parker Meadows area (a single isolated lek system located in the South Mono PMU) is experiencing a disproportionately high degree of nest failures due to nonviable eggs (Gardner 2009, pers. comm.), suggesting a possible manifestation of genetic challenges; this small breeding complex has the lowest reported genetic diversity in the Bi-State area (Oyler-McCance et al. 2014, p. 1304). We do not know if this is caused by inbreeding depression, loss of genetic diversity, or other factors, but to address this, a translocation project was developed in conjunction with the USGS and implemented in 2017. There has been some initial success in survival of transferred broods (Mathews et al. 2018, p. 37).

The Bi-State DPS comprises approximately 50 active leks representing several relatively discrete populations. Fitness and population size across a variety of taxa are strongly correlated, and smaller populations are more challenged by environmental and demographic stochasticity (Keller and Waller 2002, pp. 239–240; Reed 2005, p. 566). These small, isolated populations may face future genetic challenges. When coupled with mortality stressors related to human activity and significant fluctuations in annual population size, long-term persistence of small populations (in general) can be challenging (Traill et al. 2010, entire). The Pine Nut PMU has the smallest number of sage-grouse of all Bi-State area PMUs (usually less than 100 individuals as observed from data collected between 2003 and 2017, representing approximately 5 percent of the DPS). However, each population in the Bi-State DPS is relatively small, as is the entire DPS on average (estimated at approximately 3,280 individuals).

One way to address population health and viability is through analysis of effective population size. Effective population size is defined as the size of the idealized population of breeding adults that would experience the same rate of loss of heterozygosity, change in the average inbreeding coefficient, or change in variance in allele frequency through genetic drift as the actual population (Frankham et al. 2002, pp. 312–317). As effective population size decreases, the rate of loss of genetic diversity increases. The consequences of this loss of genetic diversity, reduced fitness through inbreeding depression and reduced adaptive (evolutionary) potential, are thought to elevate extinction risk (Frankham 2005, p. 135). Studies suggest effective population size should exceed 50 to 100 individuals to avoid short-term extinction risk caused by inbreeding depression, and mathematical models suggest that effective population size should exceed 500 individuals to retain evolutionary potential and avoid long-term extinction risk (Franklin 1980, entire; Soule 1980, entire). Some estimates of effective population size have been as high as 5,000 individuals, but these estimates are thought to be highly species specific and influenced by many extrinsic factors (Lande 1995, p. 789).

Sage-grouse have one of the most polygamous mating systems observed among birds (Deibert 1995, p. 92). Asymmetrical mate selection (where only a few of the available members of one sex are selected as mates) should result in reduced effective population sizes (Deibert 1995, p. 92), meaning the actual amount of genetic material contributed to the next generation is smaller than predicted by the number of individuals present in the population. Furthermore, variation in female reproductive success, fluctuating population size, unequal sex ratios, the fact that not all males breed each year, and other sage-grouse characteristics all reduce effective population size (Frankham 1995, p. 796; Aldridge and Brigham 2003, p. 30; Stiver et al. 2008, p. 473; Bush 2009, p. 108). Each of these influencing factors on effective population size occurs in the Bi-State DPS and suggests population sizes in sage-grouse must be greater than in non-lekking bird species to maintain long-term genetic diversity.

The effective population size of a wildlife population is often much less than its actual size. We are unaware of specific data or literature that definitively identifies the number of sage-grouse needed to maintain an effective population size of birds that would also result in a viable population. However, some literature exists to help us understand the complexities of answering this question for the Bi-State DPS or any other region within the range of the greater sage-grouse. One study concluded that up to 5,000 individual sage-grouse may be necessary to maintain an effective population size of 500 birds (Aldridge and Brigham 2003, p. 30). Their estimate was based on individual male breeding success, variation in reproductive success of males that do breed, and the death rate of juvenile birds. Similarly, a meta-analysis based on a wide array of species determined that a minimum viable population size (actual population size) necessary for long-term persistence should be on the order of 5,000 adult individuals (Traill et al. 2010, p. 32), though others have argued a minimum viable population would be from 2 to 10 times this figure (Franklin and Frankham 1998, p. 70; Lynch and Lande 1998, p. 72). However, another analysis countered that there is no single minimum population size number for all taxa, and that extinction risk depends on a complex interaction between life-history strategies, environmental context, and threat (Flather et al. 2011, entire).

Based on data from 2018, the median abundance estimate of the Bi-State DPS spring breeding population is approximately 3,305 individuals (95 percent CRI = 2,247–4,683; Coates *et al.* 2020, p. 26). This estimate (as well as PMU specific estimates) was derived using the integrated population model outputs of male abundance based on lek count and demographic (telemetry) data, as well as by multiple post-hoc adjustments, given results of ancillary research. Adjustments included reported distributions for detection probability (Coates *et al.* in press, entire), lek attendance probability (Wann *et al.* 2019, p. 7), and sex ratio (Hagen *et al.* 2018, p. 4). Also included was an adjustment to account for 'unknown' leks, based on a 95 percent assumed known lek value. This value was derived from expert knowledge by members of the Bi-State Technical Advisory Committee. Using this estimate and the studies identified above describing effective population size being on the order of 10 to 20 percent of the actual population size, in the Bi-State area, the estimated average effective population size (for the entire Bi-State area in 2018) is approximately 330 to 661 sage-grouse, below the 5,000 individual threshold recommended by some researchers, but above the 50 individual threshold. Genetic and radio-telemetry studies, however, indicate that some sage-grouse populations in the Bi-State area are isolated, suggesting that the effective population size is actually less (Table 2). Based on these data, we calculate the effective population size for four generally discrete populations in the Bi-State (as described in Oyler-McCance *et al.* 2014, Figure 4) to provide context surrounding long–term genetic viability of these units (Table 2).

TABLE 2—2018 ESTIMATED POPULATION SIZE AND RANGE OF ESTIMATED EFFECTIVE POPULATION SIZE BY GENETIC CLUSTER FOR THE BI-STATE AREA, NEVADA AND CALIFORNIA

PMU	Estimated median population size 2018	Estimated effective population size range 2018
Pine Nut	33	3–6
Desert Creek–Fales, Mount Grant, Bodie	2,342	234–468
Long Valley	818	81–163
White Mountains	45	4.5–9
Bi-State DPS	3,305	330–661

Empirical data from Colorado showed the effective population size in Gunnison sage-grouse to be about 20 percent of actual population size (Stiver et al. 2008, p. 478). We are unaware of any other published estimates of minimal population sizes necessary to maintain genetic diversity and long-term population sustainability in sage-grouse and specifically for the Bi-State DPS, and whether the described effective population sizes above are of concern. Most populations of the Bi-State DPS have been below the possible minimum population sizes as described above, in large part due to the natural cycling of sage-grouse populations, yet continue to persist.

Small population size and a discontinuous population structure occur throughout the Bi-State DPS's range, which could make the Bi-State DPS more vulnerable to impacts of threats described herein both currently and likely in the future in the absence of any ameliorating conservation efforts. However, conservation efforts addressing the threats acting upon these small populations have been implemented since publication of the proposed listing rule, including (but not limited to) translocation of sage-grouse into the Parker Meadows subpopulation, restoring critical brood-rearing habitat areas, and addressing invasive nonnative and native plants. Because we expect conservation implementation to continue under the BSAP (Bi-State TAC 2012, entire), the risks associated with small population size will be reduced.

Summary of Threats

Throughout the threats discussion, we considered individual threats and, where appropriate, how they interact with other threats. Here, we consider the threats holistically to determine their impact on the Bi-State sage-grouse and its habitat.

Currently and into the future, the threats with the highest impact to the DPS are wildfire and altered fire regimes, and nonnative invasive and native woodland succession. Threats from urbanization and habitat conversion; infrastructure; mining; grazing and rangeland management; climate change; predation, and small population size and population isolation are also occurring. Threats from recreation and disease affect only a few individuals a year, and we do not expect that rate to increase into the foreseeable future. All of these threats are exacerbated by the population isolation and discontinuous population structure.

In summarizing the impacts of threats, we also consider impacts of renewable energy, commercial and recreational hunting, scientific and educational uses, and contaminants (including pesticides). Though impacts from these threats are expected to be minimal relative to the overall condition of the DPS (Service 2020, pp. 63–124), and though we did not present summary analyses of these threats in this **Federal Register** document, we still consider them when evaluating the cumulative impact of all threats on the DPS.

Small, isolated populations such as those found in the Bi-State area are more challenged by stochastic events such as disease epidemics, prey population crashes, or environmental catastrophes. Interactions between climate change, drought, wildfire, WNv, and the limited potential to recover from population downturns or extirpations place significant challenges to the persistence of the Bi-State DPS of sage-grouse.

One of the most substantial interactions of threats is the cycle between climate change, cheatgrass, and altered fire regimes. Warmer temperatures and greater concentrations of atmospheric carbon dioxide create conditions favorable to cheatgrass, thus continuing the positive feedback cycle between the invasive annual grass and fire frequency (Chambers and Pellant 2008, p. 32; Global Climate Change Impacts in the United States 2009, p. 83; Halofsky et al. 2018, pp. 276–277). Fewer frost-free days also favor frost-sensitive woodland vegetation, which facilitates expansion of woodlands into the sagebrush biome, especially in the southern Great Basin (Neilson et al. 2005, p. 154). Thus, sagebrush habitats in the Great Basin will likely be lost at more southerly latitudes and low-elevation sites, and upper elevation areas will be more susceptible to woodland succession and cheatgrass invasion. In the Bi-State area, substantial changes in vegetation communities could occur between 2025 and 2100 (Neilson et al. 2005, p. 155; Bradley 2010, p. 204; Comer et al. 2013, p. 142; Finch 2012, p. 10).

Overall, the cumulative impact of all threats affecting the Bi-State DPS can be influenced by interactions with co-occurring threats, resulting in significant impacts to the resiliency, redundancy, and representation of the DPS as a whole. However, as a result of conservation actions associated with the 2012 BSAP (Bi-State TAC 2012, entire), impacts from all threats individually and combined are generally being reduced from their current levels and will continue to be reduced even more in the future.

Policy for Evaluation of Conservation Efforts When Making Listing Decisions

The purpose of PECE (68 FR 15100; March 28, 2003) is to ensure consistent and adequate evaluation of recently formalized conservation efforts when making listing decisions. The policy provides guidance on how to evaluate conservation efforts that have not yet been implemented or have not yet demonstrated effectiveness. The evaluation focuses on the certainty that the conservation efforts will be implemented and the effectiveness of the conservation efforts in making listing a species unnecessary. The policy presents nine criteria for evaluating the certainty of implementation and six criteria for evaluating the certainty of effectiveness for conservation efforts. These criteria are not considered comprehensive evaluation criteria. The certainty of implementation and the effectiveness of a formalized conservation effort may also depend on species-specific, habitat-specific, location-specific, and effort-specific factors. We consider all appropriate factors in evaluating formalized conservation efforts. The specific circumstances will also determine the amount of information necessary to satisfy these criteria.

To consider that a formalized conservation effort contributes to forming a basis for not listing a species, or listing a species as threatened rather than endangered, we must find that the conservation effort is sufficiently certain to be (1) implemented and (2) effective, so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through section 4(a)(1) analysis under the Act. The elimination or adequate reduction of section 4(a)(1) threats may lead to a determination that the species does not meet the definition of threatened or endangered, or is threatened rather than endangered.

An agreement or plan may contain numerous conservation efforts, not all of which are sufficiently certain to be implemented and effective. Those conservation efforts that are not sufficiently certain to be implemented and effective cannot contribute to a determination that listing is unnecessary, or a determination to list as threatened rather than endangered. Regardless of the adoption of a conservation agreement or plan, however, if the best available scientific and commercial data indicate that the species meets the definition of ''endangered species'' or ''threatened species'' on the day of the listing decision, then we must proceed with appropriate rulemaking activity under section 4 of the Act. Further, it is important to note that a conservation plan is not required to have absolute certainty of implementation and effectiveness in order to contribute to a listing determination. Rather, we need to be reasonably certain that the conservation efforts will be implemented and effective such that the threats to the species are reduced or eliminated.

Prior to the Bi-State DPS becoming a candidate species in 2010, a variety of conservation initiatives were put in place to conserve the DPS and its habitat. The most significant initiative was the creation of the *Nevada Governor's Sage Grouse Conservation Team* in June 2002 who, in cooperation with local stakeholders (the Bi-State Local Area Working Group), developed the first edition of the Greater Sage Grouse Conservation Plan for the Bi-State area in 2004 (BSLPG 2004, entire) to begin a cooperative effort to address threats to the Bi-State DPS and its habitat. The 2004 Action Plan served as the foundation for the conservation of the Bi-State DPS and its habitat. These efforts were later enhanced by both local- and national-level conservation strategies for sage-grouse conservation (including in the Bi-State area) associated with organizations including the Sage Grouse Initiative, and the Bi-State LAWG, the latter of which is specifically focused on Bi-State DPS conservation.

In December 2011, the Bi-State Executive Oversight Committee (EOC) was formed to leverage collective resources and assemble the best technical support to achieve long-term conservation of the Bi-State DPS and its habitat. The EOC comprises resource agency representatives from the Service, BLM, USFS, NRCS, USGS, NDOW, and CDFW. Recognizing that conservation efforts were already under way by this point in time, the EOC directed a Bi-State TAC, comprising technical experts/members from each agency, to summarize the conservation actions completed since 2004, and to develop a comprehensive set of strategies, objectives, and actions that would be effective for the long-term conservation of the Bi-State DPS and its habitat. These strategies, objectives, and actions comprise the 2012 BSAP (Bi-State TAC 2012, entire), which is actively being implemented by the signatory agencies identified above, as well as Mono County, who is committed to implementing all relevant actions within the County (which harbors the two core populations of the Bi-State DPS). A majority of the conservation efforts outlined in the BSAP have already been started or completed (see sections 2.2 and 2.3 of the Action Plan (Bi-State TAC 2012, pp. 4–13) and the updated project spreadsheet (Bi-State TAC 2019), and the *Past and Ongoing Management Efforts* discussion in the Species Report (Service 2020, pp. 137–144).

Additionally, in February 2013, a Conservation Objectives Team (COT) of State agencies and Service representatives prepared the *Greater Sage-Grouse (Centrocercus urophasianus) Conservation Objectives Final Report* (COT Report; Service 2013a, entire). This peer-reviewed report serves as a benchmark, delineating reasonable objectives necessary for the conservation and survival of greater sage-grouse, including the Bi-State DPS. The guidance includes management recommendations for the species and its habitat and establishes thresholds based on the degree to which threats need to be reduced or ameliorated to conserve greater sage-grouse so that it would not be in danger of extinction or likely to become in danger of extinction within the foreseeable future. Conservation success is expected to be achieved by removing or reducing threats, such that population trends would eventually be stable or increasing, even if numbers are not restored to historical levels. The 2012 BSAP is the main document guiding implementation of conservation actions, and the COT provides additional scientific background and guidelines for those actions.

Based on information provided in the 2013 proposed rules and discussions with the EOC, TAC, and LAWG, signatory agencies in 2014 provided a package of information examining their commitments, including staffing and funding, to implement the actions needed for conservation of the Bi-State DPS and its habitat, as outlined in the BSAP. They also provided an updated prioritization of various conservation actions and site-specific locations in which to implement such actions, as needed, based on the Conservation Planning Tool (CPT—linked, data-driven predictive models and interactive maps that identify and rank areas for management actions and provide a basis to evaluate those actions) and the BSAP's Adaptive Management Strategy (Bi-State EOC 2014, *in litt.*). The agency commitment letters, which were one component of the information provided by the EOC (BLM 2014a, *in litt.;* CDFW 2014b, *in litt.;* Mono County 2014, *in litt.;* NDOW 2014, *in litt.;* USDA 2014, *in litt.;* USGS 2014a, *in litt.*), outlined many partially completed or new conservation actions that will be implemented and completed to address the threats that were identified in our October 28, 2013, proposed listing rule (78 FR 64358).

The EOC evaluated the [then current] Bi-State DPS survey and trend information and concluded that their unified and collaborative approach addresses the conservation needs of the Bi-State DPS (Bi-State EOC 2014, *in litt.*). Additionally, the EOC concluded that each partner agency is committed to implementing the BSAP and providing the necessary resources to do so regardless of the outcome of the Service's listing decision (Bi-State EOC 2014, *in litt.*). In the past year, several agencies have provided updated letters reaffirming their commitment to the BSAP and the TAC (BLM 2019, *in litt.;* Mono County 2018, *in litt.;* NDOW 2018, *in litt.;* NRCS 2018, *in litt.;* USFS 2018, *in litt.*).

The information provided by the EOC indicates that significant conservation efforts are currently being implemented and that further actions are proposed for implementation in the future. These combined actions address the threats that (synergistically) are resulting in the most severe impacts on the DPS and its habitat now and into the future. These conservation actions are described in our detailed PECE analysis (Service 2019, entire).

Using the criteria in our PECE policy (68 FR 15100, March 28, 2003), we evaluated the certainty of implementation (for those measures not already implemented) and effectiveness of conservation measures in the BSAP. Below is a summary of our full PECE analysis, which can be found at *http://www.regulations.gov* under either Docket No. FWS–R8–ES–2018–0106 or Docket No. FWS–R8–ES–2018–0107.

The BSAP (Bi-State TAC 2012, entire) was designed to reduce or ameliorate threats impacting the Bi-State DPS. We have determined that the conservation efforts in the BSAP meet the PECE criteria with regard to certainty of implementation because of (but not limited to): (1) The agency commitments of staffing and significant funding (over $45 million in the period 2015–2024); and (2) continued participation on the Bi-State EOC, TAC, and LAWG to ensure the most important conservation efforts are occurring at any given time considering ongoing research and monitoring that may influence changes in management strategies, as outlined in the BSAP's Science-based Adaptive Management Plan and through use of the CPT. Additionally, we have certainty of implementation by the various agencies for conservation efforts that address many different impacts. In particular, we have certainty of implementation for those completed and ongoing conservation efforts expected to provide the most significant conservation value to the Bi-State DPS and its habitat, including actions (as outlined in the agencies' 2014, 2018, and 2019 commitment letters and work plans, and the comprehensive project database (Bi-State TAC 2019)) that:

(1) Protect and restore critical brood-rearing habitat (reduces impacts from development/habitat conversion, grazing and rangeland management, and effects resulting from climate change). Lead agencies under the BSAP implementing conservation actions to reduce these impacts are NRCS (*e.g.,* conservation easements, riparian/meadow restoration), USFS (*e.g.,* private-public land exchanges, riparian/meadow restoration or improvement, grazing management, wild horse management), BLM (*e.g.,* riparian/meadow restoration, meadow irrigation and structure repair, racetrack fence removal, wild horse management), and Mono County (*e.g.,* fencing modification).

(2) Restore habitat impacted by the spread of invasive, nonnative plants and pinyon-juniper encroachment (reduces impacts from nonnative, invasive and certain native plants, wildfire, predation, and effects resulting from climate change). Lead agencies under the BSAP implementing conservation actions to reduce these impacts are NRCS (*e.g.,* pinyon-juniper removal), USFS (*e.g.,* pinyon-juniper removal, riparian/meadow restoration, invasive weed treatments), and BLM (*e.g.,* pinyon-juniper removal, riparian/meadow restoration, invasive weed treatments, wildfire fuel break treatments, fencing removal).

(3) Ensure stable or increasing sage-grouse populations and population structure to: (a) Prioritize management actions related to synergistic impacts on already fragmented habitat, such that management efforts occur in locations that benefit the DPS the most (reducing impacts such as infrastructure, urbanization, and recreation), and (b) develop and implement sage-grouse translocation from stable subpopulations to other small subpopulations that may be experiencing a high risk of extirpation (reduces impacts from small population size and population structure). Lead agencies under the BSAP implementing conservation actions to reduce these impacts are USGS, NDOW, and CDFW. Actions under way by CDFW include conducting telemetry, research, or monitoring surveys that inform the CPT of adjustments to the BSAP conservation strategy that provide the greatest benefit to the DPS or its habitat (see section 6.5 in the BSAP (Bi-State TAC 2012, pp. 75–76) and implementing translocation programs from stable subpopulations to subpopulations that may be at high risk of extinction). Actions under way by BLM include permanent and seasonal road closures, nesting habitat seasonal closures, and fencing removal or marking; actions under way by USFS include permanent and seasonal road closures and power line removal. Actions under way by Mono County include coordination with private landowners to encourage reduced infrastructure and closure and relocation of the Long Valley landfill.

We also note that BLM, USFS, NRCS, and Mono County have provided specific plans and timetables laying out various conservation efforts for implementation from 2015 through 2024 (BLM 2014a, *in litt.;* Mono County 2014, *in litt.;* USDA 2014, *in litt.*), while CDFW, NDOW, and USGS have provided textual descriptions of their intended actions and contributions from 2015 through 2024 (CDFW 2014b, *in litt.;* NDOW 2014, *in litt.;* USGS 2014a, *in litt.*); many agencies sent letters reaffirming their commitment to the EOC and the TAC (BLM 2019, entire; Mono County 2018, *in litt.;* NDOW 2018, *in litt.;* NRCS 2018, *in litt.;* USFS 2018, *in litt.*). Additionally, the collaboration between the Service, BLM, USFS, NRCS, Mono County, USGS, NDOW, and CDFW requires regular meetings and involvement from the parties, whether at the level of the Bi-State EOC, TAC, or LAWG, in order to implement the BSAP fully. These meetings have occurred regularly since 2014.

We are confident that the conservation efforts (as outlined in the BSAP, agency commitment letters, and our detailed PECE analysis, as well as the TAC comprehensive project database) will continue to be implemented because we have a documented track record of active participation and implementation by the signatory agencies and commitments to continue implementation into the future. Conservation measures, such as pinyon-juniper removal, establishment of conservation easements for critical brood-rearing habitat, cheatgrass removal, permanent and seasonal closure of roads near leks, removal and marking of fencing, and restoration of riparian/meadow habitat have been completed over the past 15 years, are currently occurring, and have been prioritized and placed on the agency's implementation schedules for future implementation. Agencies have committed to remain participants and continue conservation of the DPS and its habitat. The BSAP has sufficient methods (science advisors, the CPT, and a Science-based Adaptive Management Strategy) for determining the type and location of the most beneficial conservation actions to be implemented, including continued receipt of new population and threats information in the future that will guide conservation efforts.

We have determined that the conservation efforts in the BSAP meet the PECE criteria with regard to certainty of effectiveness to remove or reduce threats facing the Bi-State DPS because of, but not limited to, past project effectiveness within the Bi-State area or within sagebrush habitat areas across the range of the greater sage-grouse, and documented effective methodologies for addressing the threats identified as impacting the Bi-State DPS. For example:

(1) Development and Habitat Conversion—Conservation efforts to reduce development and habitat conversion are anticipated to occur in critical brood-rearing habitats across five PMUs, including through conservation easements and land exchanges (see detailed PECE analysis, Section 3.0). In total, 12,243 ha (30,254 ac) have been entered into conservation easements or acquired through land purchase or exchange since 2012 (Bi-State TAC 2018, p. 25). Our analysis of the database and the agency commitment letters reveals partially completed and future conservation efforts will occur in the Pine Nut, Bodie, Desert Creek-Fales, Mt. Grant, and South Mono PMUs, totaling approximately 7,284 ha (18,000 ac) of lands identified as important for conservation by the TAC. These efforts have funding obligated and are in various stages of easement development, with many anticipated to be completed in a few years (BSAP 2019). Further, an effort to acquire approximately 5,870 ha (14,500 ac) of lands in the Pine Nut PMU by the Carson City BLM has been approved and is anticipated to finalize in spring of 2020. These areas include high-priority targets identified in the BSAP, and are consistent with the COT Report's ex-urban conservation objective to limit urban and exurban development in sage-grouse habitats (Service 2013a, p. 50). In total, approximately 31 percent of all private lands containing suitable sage-grouse habitat across the Bi-State are enrolled under an easement program or have been acquired by federal and State agencies and this number is expected to increase to 57 percent when combining additional efforts that are ongoing and reasonably likely to occur. Furthermore, these acquisitions represent approximately 67

percent of private lands identified as important for conservation of the species in the 2012 Action Plan. These actions are considered effective at reducing impacts from development and habitat conversion because conserving and managing lands in perpetuity are the most successful tools for permanent protection of critical sage-grouse habitat (as demonstrated by Pocewicz et al. (2011) in Wyoming).

(2) Grazing and Rangeland Management—Conservation actions under the BSAP continue to reduce grazing impacts and ensure management of livestock consistent with the needs of the DPS. This includes 46 projects across the range of the DPS that have been completed since 2012, including (but not limited to): Maintaining, improving, or restoring riparian/meadow sites impacted by grazing animals across multiple PMUs, improving BLM grazing allotment permit terms and conditions to protect riparian areas, and reducing the risk of overgrazing that can facilitate the dominance of cheatgrass in upland habitats (Bi-State TAC 2019, *in litt.*). An additional 32 projects focused on maintaining area closures to permitted livestock, monitoring compliance with permitted terms and conditions, maintenance of ''let-down'' fencing, and meadow irrigation have also been conducted on an annual and ongoing basis since 2012. The conservation efforts database identifies seven projects that are either in progress or not yet started, including new grazing permit processing and the restoration of degraded sagebrush and meadow habitat at several sites in the Desert-Creek Fales, Bodie, and Mount Grant PMUs (Bi-State TAC 2019, *in litt.*). Additionally, the BSAP identifies a specific strategy (MER6) to address grazing issues related to wild horse populations, which are known to negatively impact meadows and brood-rearing habitats used by the Bi-State DPS (Bi-State TAC 2012, p. 92).

The effectiveness of these grazing and rangeland management conservation efforts are confirmed by published literature (Boyd et al. 2014, entire; Stevens et al. 2012, p. 301; Davies et al. 2011, pp. 2575–2576; Pyke 2011, p. 537), which articulate the value of maintaining functional working landscapes that include grazing activities with site-specific management as necessary (*e.g.,* restoring meadows to improve sage-grouse brood-rearing habitat) to ensure longevity of sagebrush ecosystems and the habitat areas deemed most critical to the Bi-State DPS.

(3) Nonnative Invasive Plants and Native Woodland Succession—Because both nonnative invasive plants and particularly native woodland species (pinyon-juniper encroachment) displace the sagebrush ecosystem necessary for the Bi-State DPS, significant conservation efforts are being and will continue to be implemented to address these problems. With regard to nonnative invasive plants, the Bi-State EOC and TAC recognize that effective control programs can be labor intensive and costly; however, the Bi-State EOC and TAC believes there is value for the Bi-State DPS in being strategic in implementing the conservation efforts that potentially reduce the impact these plants have on the DPS's habitat (*e.g.,* treating nonnative, invasive plants in strategic areas to potentially reduce the likelihood of an outbreak or improve a priority habitat area) (Espinosa 2014, *in litt.*). Since 2012, chemical or mechanical treatments of nonnative plant species have occurred on nearly 526 ha (1,300 ac), and weed monitoring was completed on 858 ha (2,121 ac) across multiple PMUs (Bi-State TAC 2018, p. 30). Two projects are currently under way or planned for the future that target invasive, nonnative plants on more than 243 ha (600 ac) in the Desert Creek-Fales and Pine Nut PMUs (cheatgrass is considered a high threat in Pine Nut compared to other PMUs). Additionally, the USFS committed to control least 40.5 ha (100 ac) of cheatgrass each year from 2015 through 2024 in the Pine Nut PMU (USDA 2014, *in litt.*). While combatting invasive annual grasses remains a challenge, the most effective method to date is through the retention of a healthy native perennial understory, which is the primary objective of both the TAC and LAWG (Bi-State TAC 2018, p. 30). Methods of active restoration of degraded sites can be effective through herbicide or mechanical means but require additional actions such as reseeding with perennial species (Frost and Launchbaugh 2003, pp. 43–44; Jones et al. 2015, p. 17).

With regard to pinyon-juniper encroachment, ecologists have developed clear and effective recommendations to target appropriate phases of encroachment (specific age and density structure) to ensure restoration occurs in sagebrush and sage-grouse habitat areas that are most meaningful (*e.g.,* critical brood-rearing habitat, corridors in fragmented areas) (*e.g.,* Bates et al. 2011, pp. 476–479; Davies et al. 2011, pp. 2577–2578). Accordingly, BLM, USFS, and NRCS are strategically targeting phases I and II pinyon-juniper encroachment in the Bi-State area, which is supported by literature as effective with careful planning and execution (*e.g.,* Bates et al. 2011, pp. 476–479; Davies et al. 2011, pp. 2577–2578). As of December 2018, pinyon and juniper removal has taken place on more than 18,700 ha (46,400 ac) within or adjacent to sage-grouse habitat, including minor projects to remove phase I tree encroachment from nesting habitat to more intensive mechanical removal within both phase I and phase II areas to expand available sage-grouse habitat and enhance existing conditions within nesting, brood-rearing, and winter habitats, representing approximately 25 percent of all conifer treatments proposed in the 2012 Action Plan (Bi-State TAC 2018, p. 27.). Furthermore, conifer treatment maintenance has been completed on more than 3,000 ha (7,400 ac). Approximately 8,245 ha (20,373 ac) of additional conifer treatments are currently in progress and have analyses under the National Environmental Policy Act (NEPA) either completed or under development (Bi-State TAC 2018, *in litt.*).

Subsequent to our prior withdrawal of the 2013 proposed listing rule, several studies have been published that demonstrate the effectiveness of pinyon-juniper removal across the range of the greater sage-grouse. These studies have demonstrated that: Sage-grouse readily nest in conifer treatment sites after trees had been removed (Severson et al. 2017, p. 53); woodland treatments increased suitable available breeding habitat and enhanced nest and brood success (Sandford et al. 2017, p. 63); and removal of pinyon-juniper trees encroaching into sagebrush vegetation communities can increase sage-grouse population growth through improving juvenile, yearling, and adult survival as well as improving nest survival (Olsen 2019, pp. 21–22). Additionally, sage-grouse population growth was 11.2 percent higher in treatment versus control sites within 5 years of conifer removal (Olsen 2019, pp. 21–22). Thus, we conclude that pinyon-juniper removal is effective in restoring areas impacted by woodland succession such that they become suitable and productive for sage-grouse, reducing the magnitude of the threat on the species.

(4) Infrastructure—Conservation efforts to reduce infrastructure are focused on roads, power lines, fencing, and a landfill. Permanent and seasonal road closures over a minimum of 2,137 miles in the Bodie, Desert Creek-Fales, Mount Grant, South Mono, and Pine Nut PMUs will reduce the likelihood of mortality and improve vital rates for sage-grouse near leks, including nesting and brood-rearing areas. Nearly 22 miles

of power line and fencing removal projects have occurred in the Bodie, Pine Nut, and South Mono PMUs, and approximately 141 miles of fencing have been marked or modified across all PMUS. Some of these projects require annual maintenance, such as let-down fences, and three projects that will mark and modify fencing in the Pine Nut, Desert Creek-Fales, or South Mono PMUs are scheduled to be completed in the future. Additionally, a landfill in the Long Valley area of the South Mono PMU is a significant source of predators for one of the two core populations of the Bi-State DPS; Mono County is undergoing the initial stages of relocating this landfill (Bi-State TAC 2014, *in litt.;* Mono County 2014, *in litt.:* Mono County 2018, *in litt.*).

Removing or modifying the types of infrastructure described above will be effective at reducing the amount of invasive plants present along or around developed areas (Manier et al. 2014, pp. 167–170), reducing existing habitat fragmentation and potential vectors for invasive plants (Gelbard and Belnap 2003, pp. 424–431); removing some edge effects that can lead to avoidance of nesting in suitable habitat areas (Aldridge and Boyce 2007, pp. 516–523); reducing or removing anthropogenic noise that disturbs normal behavior patterns of sage-grouse (Blickley 2013, pp. 54–65); reducing collision-related mortalities (associated specifically with fencing) (Stevens et al. 2012, pp. 299–302); and making currently undesirable habitat areas (that attract predators) favorable by sage-grouse as nest and brood sites by reducing predator attractants (*e.g.,* power lines, landfill) (Dinkins et al. 2012, pp. 605–608).

(5) Wildfire—Fires have consumed some important habitat areas within the range of the Bi-State DPS, primarily within the Pine Nut PMU, but also recently as a result of the Spring Peak fire within the Bodie and Mount Grant PMUs and the Boot Fire in the Desert Creek–Fales PMU (Espinosa 2014, *in litt.:* Service 2020, p. 26). Site restoration activities are planned to be implemented following wildfires by utilizing the CPT to identify sites that are the best candidates for enhancing or returning sagebrush habitats to conditions that benefit sage-grouse (Espinosa 2014, *in litt.*). Restoration efforts will be tracked for success, noting that some actions (*e.g.,* seeding) vary in success rate, given variables such as elevation, precipitation, and site-conditions prior to a fire (Espinosa 2014, *in litt.*). Recovery of functional sagebrush habitats following wildfire and restoration actions can take decades (potentially several sage-grouse generations) to be realized, and requires monitoring to assure conservation objectives are met (such as ensuring appropriate levels of sagebrush and native herbs are established, and reducing nonnative plant dominance) (Arkle et al. 2014, p. 17). Additionally, the Bi-State TAC currently utilizes the CPT and field reconnaissance to maximize the likelihood of enhancing the desired sagebrush community composition post-fuels reduction treatment activities (Espinosa 2014, *in litt.*). As of December 2018, restoration following wildfire has resulted in fire rehabilitation treatments on more than 7,690 ha (19,000 ac) (Bi-State TAC 2018, *in litt.*).

(6) Small Population Size and Population Structure—The BSAP specifically identifies a strategy (MER7) to address small population size issues in the Bi-State area, by identifying potential sage-grouse population augmentation and reintroduction sites, developing translocation guidelines, and potentially implementing augmentation and reintroduction efforts (Bi-State TAC 2012, p. 93). Specific actions include developing contingency plans for the Parker Meadows and Gaspipe Spring subpopulations in the South Mono PMU, and populations in the Pine Nut PMU; and evaluating the need for augmentation for the Fales population of the Desert Creek-Fales PMU, the Powell Mountain area of the Mount Grant PMU, the McBride Flat/Sagehen Spring area in the Truman Meadows portion of the White Mountains PMU, and Coyote Flat of the South Mono PMU.

In 2016, CDFW began implementing a plan to translocate sage-grouse from stable subpopulations in the Bi-State area to the Parker Meadows subpopulation in the South Mono PMU (Bi-State TAC 2014, *in litt.;* CDFW 2014b, *in litt.;* Mathews et al. 2018, pp. 14–34). Prior to initiating this effort, members of the Bi-State TAC conducted a site visit to assess habitat condition and conducted removal of conifer trees that had become established in proximity to the lek and brood-rearing meadow. Preliminary results suggest that translocated birds are increasingly remaining in the Parker Meadows area. Additionally, probability of nest initiation and nest success have increased, brood success is on par with the remainder of the DPS, and lek counts have increased over the past two years (Bi-State TAC 2018, pp. 13–14; Mathews et al. 2018, pp. 28–34). Efforts on this current action are directly relevant to future conservation efforts for other unstable subpopulations. It is reasonable to assume future translocations in the Bi-State area have a high likelihood of effectiveness given continued careful consideration to all the variables (including translocation that would occur concurrent with other threat reduction activities, such as conifer removal or predator control), and published literature that also indicates success of translocated sage-grouse when successful translocation methodology is followed (Musil et al. 1993, pp. 89–90; Reese and Connelly 1997, pp. 239–240; Hennefer 2007, pp. 33–37; Baxter et al. 2008, pp. 184–185).

For details of additional conservation efforts related to effects associated with climate change, disease, predation, and other threats, please see the full PECE analysis (Service 2019, entire).

We will have an ongoing role in monitoring the implementation and effectiveness of the partially completed and future conservation efforts given our regular participation with the Bi-State EOC, TAC, and LAWG, participation in providing updated versions of the BSAP, and by reviewing any monitoring and research reports. We are satisfied that the conservation efforts evaluated will be effective in reducing threats to the Bi-State DPS and its habitat; however, to do so, they do not need to be applied on every acre of suitable and unsuitable sage-grouse habitat. For instance, not all of the native pinyon-juniper vegetation needs to be removed, such as in areas within the range of the Bi-State DPS where pinyon-juniper historically occurred. Rather the effort needs, and is expected, to be implemented in areas that are most likely to support sage-grouse (post-removal) and critical areas that address habitat fragmentation or reduced-connectivity issues. These efforts need to occur at a rate that significantly reduces further habitat losses, which is consistent with the objective to address pinyon-juniper expansion provided in the March 22, 2013, COT Report for conservation of the greater sage-grouse (Service 2013a, pp. 47–48), including the Bi-State DPS.

We have determined that the agencies' resource commitments (*e.g.,* staffing and funding, including more than $45 million from 2015 through 2024), and a demonstrated record of implementation will ensure continued conservation of habitat for the Bi-State DPS. The BSAP has sufficient monitoring and reporting requirements to ensure that the proposed future conservation measures are implemented as planned and are effective at removing threats to the DPS and its habitat. The collaboration between the Service, BLM, USFS, NRCS, Mono County, USGS, and the States of Nevada and California requires regular team meetings (Bi-State EOC, TAC, and EOC), and continued involvement of all parties will occur (Bi-State EOC 2014, *in litt.*) in order to implement the BSAP fully. We find that the future conservation efforts in the BSAP meet the PECE criteria for certainty of implementation and effectiveness, and can be considered as part of the basis for our final listing determination for the Bi-State DPS.

In conclusion, we find that the conservation efforts in the BSAP, and as outlined in the agencies' 2014, 2018, and 2019 commitment letters, meet the PECE criteria with regard to certainty of implementation (for those measures not already implemented) and effectiveness and can be considered as part of the basis for our listing determination for the Bi-State DPS. Our full analysis of the 2012 BSAP, and additional materials submitted to the Service as mentioned above, pursuant to PECE can be found at *http://www.regulations.gov* under either Docket No. FWS–R8–ES–2018–0106 or Docket No. FWS–R8–ES–2018–0107.

Summary of Comments and Recommendations

As discussed above in Previous Federal Actions, the Bi-State DPS of the greater sage-grouse has a long and complex listing history. This has included multiple public comment periods since the proposed rules were published on October 28, 2013 (78 FR 64328, 78 FR 64358). In the period 2013–2015, we published five documents announcing to the public new comment periods, extensions to the comment periods, new information that became available, and a 6-month extension of making the final listing determination (78 FR 77087, December 20, 2013; 79 FR 19314, April 8, 2014; 79 FR 26684, May 9, 2014; 79 FR 31901, June 3, 2014; and 79 FR 45420, August 5, 2014). We held one public hearing in Minden, Nevada, on May 28, 2014, and one public hearing held in Bishop, California, on May 29, 2014. Newspaper notices inviting general public comment and advertisement of the information and public hearings was published in The Inyo Register, The Record Courier, and the Reno-Gazette Journal.

When we reinstated the proposed listing rule on April 11, 2019, we reopened the comment period for 60 days (84 FR 14909); the comment period opened on April 12, 2019, and closed on June 11, 2019. When we announced the 6-month extension on October 1, 2019 (84 FR 52058), we reopened the public comment period for an additional 30 days; the comment period closed on October 31, 2019. In all comment periods, we also contacted appropriate Federal and State agencies, Tribes, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for further public hearings.

Between 2013 and 2015, we received more than 6,400 public comments on the proposed rules. In 2019, we have received more than 2,600 public comments in response to the reinstatement of the proposed rules and the 6-month extension. Submitted comments were both for and against listing the species. All substantive information provided during the comment periods and relevant to this finding has either been incorporated directly into this withdrawal or is addressed below. For additional responses to comments for which there is no updated information since 2015, please see the previous withdrawal of the proposed listing rule published on April 23, 2015 (80 FR 22828).

We also received a few comments related to the proposed 4(d) rule, and more than 200 comment letters both in support of and opposition to the proposed critical habitat designation; however, given the decision to withdraw the listing proposal, no further assessment of the proposed 4(d) rule and critical habitat designation is necessary at this time.

(1) Comment: Several commenters inquired as to how the BLM RMPs, USFS LRMPs, the BSAP, and the plans developed by the LADWP are used in our evaluation of existing regulatory mechanisms. Commenters also questioned the effectiveness of these plans and of the effectiveness of regulatory mechanisms in general. Other commenters suggested that existing regulatory mechanisms are adequate.

Our Response: Existing regulatory mechanisms that could provide some protection for greater sage-grouse in the Bi-State area include: (1) Local land use laws, processes, and ordinances; (2) State laws and regulations; and (3) Federal laws and regulations. Regulatory mechanisms, if they exist, may preclude the need for listing if such mechanisms are judged to adequately address the threats to the species such that listing is not warranted. Conversely, threats on the landscape continue to affect the species and may be exacerbated when not addressed by existing regulatory mechanisms, or when the existing mechanisms are not adequate (or not adequately implemented or enforced).

We use an inherently qualitative approach to evaluate existing regulatory mechanisms when conducting a threats analysis for a proposed listing. In general, this means that we assess language in an existing mechanism/plan as well as any pertinent decisions instituted based on that language (track record) and evaluate it against the best available science informing species conservation. For the local land use regulatory mechanisms, the regulations in some counties identify the need for natural resource conservation and in some instances (such as Mono County) attempt to minimize impacts of development through zoning restrictions. To our knowledge, however, none preclude development, nor do they provide for monitoring of the loss of sage-grouse habitats. Similarly, State laws and regulations are general in nature and provide flexibility in implementation, and do not provide specific direction to State wildlife agencies, although they can occasionally afford regulatory authority over habitat preservation (*e.g.,* creation of habitat easements and land acquisitions).

With respect to Federal laws, we note that recent LRMP and RMP amendments adopted by the Humboldt-Toiyabe and Inyo National Forests and BLM's Carson City District and Tonopah Field Office in the Bi-State area appear to offer significant improved certainty toward sage-grouse conservation. These changes in conjunction with existing RMPs and LRMPs, with demonstrated track records of effectiveness (such as the BLM Bishop Field Office's RMP), supports a conclusion that currently existing Federal regulations are effective regulatory mechanisms. Federally managed lands account for approximately 89 percent of the Bi-State DPS habitat. Additionally, we note that recent changes to RMPs and LRMPs associated with greater sage-grouse conservation across its range in the western United States do not apply to the Bi-State DPS. For additional detail see the *Existing Regulatory Mechanisms* section in the 2019 Species Report.

Since the proposed rule, we received additional information on Federal regulatory mechanisms. Jointly, the Humboldt-Toiyabe National Forest and the Carson City and Tonopah Offices of the BLM have developed new Land Use Plan Amendments (HTNF 2016, entire; BLM 2016, entire). The amendments more fully address conservation of the Bi-State area by providing specific direction to management of the DPS and its habitat, including (but not limited to) direct effects (such as land disturbance) and indirect effects (such as noise) caused by management of: Recreation, grazing, weeds, wild horses and burros, minerals, fire management, and rights-of-way. Furthermore in 2019, the Inyo National Forest completed a revised Land Management Plan, which also improves management consideration of sage-grouse conservation (USFS 2019, entire). For additional discussion on existing regulatory mechanisms and our conservation efforts analysis, see discussions in Summary of Factors Affecting the Species and the *Existing Regulatory Mechanisms* and *Conservation Efforts* sections in the 2019 Species Report (Service 2020, pp. 124–147).

Therefore, we conclude that the BLM and USFS Land Use Plan amendments will limit future additional impacts caused by discretionary actions, thus greatly enhancing the conservation afforded to the Bi-State DPS and its habitat.

The 2012 BSAP is not a regulatory mechanism. As such, we have evaluated it through our PECE policy, as described in Policy for Evaluation of Conservation Efforts When Making Listing Decisions, above. Since we have concluded that it is sufficiently certain to be both implemented and effective, we have considered how the measures included in the plan are ameliorating the magnitude of threats. The LADWP plans are also not regulatory mechanisms, and we have evaluated them as an existing and ongoing conservation measure.

(2) Comment: Several commenters stated that conservation efforts to date have not been adequate, as threats remain on the landscape.

Our Response: While considerable effort has been expended over the past several years to address some of the known threats throughout portions or all of the Bi-State DPS's estimated occupied range, threats to the continued viability of the DPS into the future remain. The development of the 2012 BSAP (Bi-State TAC 2012, entire) has highlighted the importance of not only habitat restoration and enhancement but also the role of the States and other partners in reducing many of the known threats to the Bi-State DPS. Cooperative, committed efforts by Federal and State agencies, as well as Mono County will result in full implementation of the 2012 BSAP, including funding and staffing commitments from 2015 through 2024 to address the most significant impacts to the DPS and its habitat (BLM 2014a, *in litt.;* BLM 2019, *in litt.;* CDFW 2014b, *in litt.;* Mono County 2014, *in litt.;* Mono County 2018, *in litt.;* NDOW 2014, *in litt.;* NDOW 2018, *in litt.;* NRCS 2018, *in litt.;* USDA 2014, *in litt.;* USFS 2018, *in litt.;* USGS 2014a, *in litt.*). Such plans will help provide the ongoing, targeted implementation of effective conservation actions that are essential for the conservation of the Bi-State DPS and its habitat into the future. We discuss the various conservation efforts occurring currently and into the future within the estimated occupied range of the Bi-State DPS of greater sage-grouse in more detail in the detailed PECE analysis (Service 2019, entire) under Policy for Evaluation of Conservation Efforts When Making Listing Decisions.

(3) Comment: A few commenters suggest that the Bi-State DPS is not a genetically unique subspecies or that it does not meet our standard for recognition as a DPS.

Our Response: In our 12-month finding on petitions to list three entities of sage-grouse (75 FR 13910, March 23, 2010), we found that the Bi-State population of sage-grouse meets our criteria as a DPS of the greater sage-grouse under Service policy (61 FR 4722, February 7, 1996). This determination was based principally on genetic information, where the DPS was found to be both markedly separated and significant to the remainder of the sage-grouse taxon. The Bi-State DPS defines the far southwestern limit of the species' range along the border of eastern California and western Nevada (Stiver et al. 2006, pp. 1–11). Sage-grouse in the Bi-State area contain a large number of unique genetic haplotypes not found elsewhere within the range of the species (Benedict et al. 2003, p. 306; Oyler-McCance et al. 2005, p. 1300; Oyler-McCance and Quinn 2011, p. 92, Oyler-McCance et al. 2014, p. 7). The genetic diversity present in the Bi-State area population is comparable to other populations, suggesting that the differences are not due to a genetic bottleneck or founder event (Oyler-McCance and Quinn 2011, p. 91; Oyler-McCance et al. 2014, p. 8). These studies provide evidence that the present genetic uniqueness exhibited by Bi-State area sage-grouse developed over thousands and perhaps tens of thousands of years, hence, prior to the Euro-American settlement (Benedict et al. 2003, p. 308; Oyler-McCance et al. 2005, p. 1307; Oyler-McCance et al. 2014, p. 9). The available genetic information demonstrates that the Bi-State sage-grouse are both discrete from other greater sage-grouse populations and are genetically unique. Therefore, we believe the best scientific and commercial data available continues to clearly demonstrate that the Bi-State sage-grouse meet both the discreteness and significance criteria to be designated as a distinct population segment.

(4) Comment: Several commenters stated that the 2013 proposed listing rule dismissed past conservation measures without fairly addressing their breadth, effectiveness, and chance of success. Further, they submit that the Service must evaluate the conservation measures through (at minimum) an analysis consistent with PECE and must fully consider how conservation measures will reduce or remove threats. The commenters believe that a fair evaluation of the past conservation efforts would demonstrate that they are sufficient to protect the Bi-State DPS.

Alternatively, several commenters argue that past conservation efforts, while well-intended, have been inadequate to provide sufficient conservation for the DPS. Further, the commenters contend that the 2012 BSAP is voluntary in nature and does not meet the PECE standard, and that populations have continued to decline since the implementation of the BSAP.

Our Response: In this finding, we acknowledge and commend the commitment of many partners in implementing numerous conservation actions within the range of the Bi-State DPS. The PECE policy applies to formalized conservation efforts that have not yet been implemented or those that have been implemented but have not yet demonstrated whether they are effective at the time of listing. Our analysis of all conservation efforts currently in place and under development for the future is described in detail above in Policy for Evaluation of Conservation Efforts When Making Listing Decisions. The effect of conservation efforts and regulatory mechanisms on the status of a species is considered under Summary of Biological Status and Threats.

In this document, we considered whether formalized conservation efforts such as the BSAP are included as part of the baseline through the analysis of the five listing factors or are appropriate for consideration under our PECE policy. All participating agencies have provided letters affirming their commitment to the plan, as well as funding and implementation schedules (Service 2019, entire). Due to these and other considerations as outlined in our detailed PECE analysis, we concluded that the 2012 BSAP is highly certain to be implemented.

We acknowledge that the most recent population studies show that some sage-grouse populations in the Bi-State DPS have declined (Coates et al. 2020, Table 3). However, the Bi-State DPS as a whole is showing a stable, long-term trend. Conservation measures are in place to counter negative population growth (such as the Parker Meadows translocation project). Currently, 53 of the 76 high-priority projects have been initiated representing 68 percent of the projects originally identified (Bi-State TAC 2018, p. 3). Twelve projects (17 percent) were evaluated and determined to lie outside of occupied sage-grouse habitat and were subsequently removed from the list of priorities. Furthermore, 142 of the 159 identified actions in the BSAP have been initiated and are in stages of completion, meaning they are in progress, ongoing, occur annually, or have been evaluated as part of the planning process (Bi-State TAC 2018, p. 45; Service 2019, p. 33). Given that these measures are still ongoing, we do not expect that positive gains from these measures would yet be reflected in population studies.

Overall, due to many factors as outlined in our detailed PECE analysis, we concluded that future conservation measures are highly certain to be effective in ameliorating the threats currently impacting the Bi-State DPS. Therefore, we find the Bi-State DPS is not in danger of becoming extinct throughout all or a significant portion of its range, and is not likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range, and we are withdrawing the proposed listing, 4(d), and critical habitat rules for the Bi-State DPS (see Determination of Status for the Bi-State DPS below).

(5) Comment: Numerous commenters suggested that predators are a significant threat and that we did not account for this impact accurately. Further, many commenters suggested predator removal programs should be implemented. Alternatively, several commenters suggested that predator control is not sustainable and may have negative and unintended consequences.

Our Response: As discussed in *Predation,* we recognize that predation of sage-grouse is the most commonly identified cause of direct mortality during all life stages. However, we note that sage-grouse have coevolved with a suite of predators (Schroeder et al. 1999, pp. 9–10), yet the species has persisted. Thus, this form of mortality is apparently offset by other aspects of the species life-history under ''normal'' conditions. However, when non-endemic predators are introduced into a system (one with which the prey species did not evolve (*e.g.,* domestic cats and dogs)), or when other factors influence the balance between endemic predator and prey interactions, such that a predator gains a competitive advantage, predation may overwhelm a prey species life-history strategy and ultimately influence population growth and persistence (Braun 1998, pp. 145–146; Holloran 2005, p. 58; Coates 2007, p. 155; Bui 2009, p. 2; Coates and Delehanty 2010, p. 243; Howe et al. 2014, p. 41). Therefore, we agree that increases in sage-grouse predator abundance and predation rates are a concern by potentially negatively affecting population growth. However, we maintain that predation is a proximal cause of mortality and increases in predator abundance and predation rates are ultimately caused by changes in habitat conditions, which positively influence predator occurrence or efficiency. See also the *Urbanization and Habitat Conversion, Infrastructure,* and *Predation* sections in the associated Species Report for a detailed analysis on the impacts of predation (Service 2020, pp. 39–60, 110–117).

As a point of clarification, we agree that targeted, short-term predator removal programs may be warranted in instances where habitat restoration cannot be achieved in a timely manner. In these instances, predation rates and predator abundance may be artificially high and high sage-grouse mortality may be a concern. However, data do not appear to suggest that removal programs are sustainable or that they result in consistent increases in sage-grouse numbers (Hagen 2011, pp. 98–99). We intend to explore the potential benefits and negative ramifications caused by predator control through our continued coordination efforts with the Bi-State TAC and LAWG for continued conservation of the Bi-State DPS. In 2018, a research project was initiated to explore the potential benefits gained through predator management. Specifically, this project targeted nesting common ravens in Long Valley associated with the local landfill through egg-oiling to prevent successful egg hatching. While final results will not be known for several years, preliminary results suggest improved nesting success of sage-grouse in Long Valley in the spring of 2019.

(6) Comment: Numerous commenters suggested that the degree of impact we assign to specific threat factors is not accurate and suggested revisions. Further, several commenters identified an inconsistency in our proposed listing rule associated with our assignment of significance level to grazing and rangeland management.

Our Response: The threats analysis and associated discussion of the degree of impact that is described in the Species Report (2013, 2014, and 2019 versions), our 2013 proposed listing rule, our 2015 proposed withdrawal, and this document are based upon the best available scientific and commercial information. No additional information or assessments were provided by the commenters to support their claim that the analysis and conclusions in our proposed listing rule were inaccurate. However, where applicable in our revised 2019 Species Report and this document, we have updated our threats analyses based on new information received since the proposed listing rule published on October 28, 2013 (78 FR 64358). With regard to potential inconsistencies in the threats analysis in the proposed rule, we made corrections to any inconsistencies identified by commenters and as applicable in both the revised 2019 Species Report and this document.

Specifically, our 2013 proposed listing rule identified livestock grazing as a significant threat in the summary of threats section but did not reach this conclusion in the livestock grazing section of the document. We have corrected that error in this finding.

(*7) Comment:* One commenter suggested that the potential threat to sage-grouse posed by fencing can be mitigated. Alternatively, another commenter stated that fencing is a major threat and expressed concern that there are no programs in place to require fencing to be removed.

Our Response: We agree that certain practices, such as making fences more visible to sage-grouse through the use of visual markers or employing the use of alternative fence designs, such as let-down fencing, can reduce certain impacts to the Bi-State DPS caused by fencing, specifically collision. However, we do not anticipate that these efforts will completely ameliorate the threat of collision. For example, one study found that marking fences reduced the fence collision rate during the sage-grouse breeding season by 83 percent (Stevens et al. 2012, p. 301). Nevertheless, collisions still occurred at marked fences, especially those in close proximity to spring breeding sites, suggesting marking alone did not completely resolve the concern. Furthermore, while direct mortality through collision may be minimized by these approaches, indirect impacts caused by predation and other forms of habitat degradation may remain (see the discussion of impacts due to fences under *Infrastructure* above and in the 2019 Species Report (Service 2020, pp. 54–57)). Therefore, a combination of approaches to managing fences and their impacts needs to be applied, which may include removal. These efforts are currently ongoing in the Bi-State area (Bi-State TAC 2018, p. 33).

With regard to the comment that fencing may be considered a major threat, we have described the impacts that may occur from fencing based on the best scientific and commercial information available. We found that fencing impacts are widespread but generally minor. In addition, management actions are being undertaken to further ameliorate this threat. For example, approximately 20 km (13 mi) of fencing has been removed or modified in the Bi-State area, and approximately 101 km (63 mi) of fencing has been marked with visual flight diverters. Furthermore, the BLM RMP and USFS LRMP amendments prepared by the Humboldt-Toiyabe and Inyo National Forests, and the Carson City District and Tonopah Field Office of the BLM, specifically identify restrictions on new fence installation and removal or marking of fences already in place within 1.9–3.2 km (1.2–2 mi) of an active lek.

The removal of fencing throughout all of the Bi-State area is not feasible. However, consideration of alternative approaches to traditional fencing would help reduce impacts of fencing to sage-grouse (for example, use of let-down fence designs), and we will continue to work with partners to encourage implementation of reduced or alternative approaches to fencing in areas that are most important to the Bi-State DPS. Conservation efforts are under way currently and into the future to reduce fencing impacts in priority areas (*e.g.,* BLM's removal of racetrack fencing in Bodie PMU, marking or modifying fencing in Pine Nut and South Mono PMUs) (Bi-State TAC 2018, entire).

(*8) Comment:* A few commenters suggested woodlands and woodland expansion is natural and should be left alone. Specifically, commenters speculated that forest occurrence is a reestablishment of sites that were harvested during historic mining in the latter part of the 1800s or that woodlands are naturally occurring. Further, the commenters suggested that woodland treatments are not effective at positively influencing sage-grouse population performance.

Our Response: Across the Bi-State area, we estimate that approximately 40 percent of the historically available sagebrush habitat has been usurped by woodland succession over the past 150 years (USGS 2012, unpublished data). As described in the 2019 Species Report (Service 2020, pp. 73–79) and in *Nonnative Invasive Plants and Native Woodland Succession,* the cause of this increase is likely multifaceted but most certainly includes recovery from past disturbances such as mining. However, the support for this single mechanism is not apparent. For example, while there are locations within the Bi-State area where there are stumps from harvested trees attributable to the mining era, most locations do not contain evidence of past tree cutting. Furthermore, genetic evidence suggests that sage-grouse populations contained within the Bi-State area were historically more connected and that these connections began to erode relatively recently (Oyler-McCance et al. 2014, pp. 10–11). This finding suggests that barriers to movement, such as trees, were less restrictive historically as compared to today. No additional information was received by the commenter or others since the proposed listing rule published that would modify our understanding of this threat. Therefore, based on the best available information, we conclude that woodland expansion is a significant threat in the Bi-State area as it has reduced habitat availability and negatively influenced population connectivity. As a result, conservation efforts are under way currently and into the future to reduce potential woodland succession impacts in priority areas (*e.g.,* BLM, USFS, and NRCS treatments of phase I and II pinyon-juniper encroachment in all six PMUs) (phases of pinyon-juniper encroachment are generally defined by percent tree cover and tree age in the affected area) (Miller et al. 2008, p. 5; Bi-State TAC 2018, pp. 26–29).

Ultimately, the cause of woodland encroachment becomes less relevant in light of its implications as the response to tree presence by sage-grouse is uniformly negative (Commons et al. 1999, p. 238; Doherty et al. 2008, p. 187; Freese 2009, pp. 84–85, 89–90; Casazza et al. 2011, p. 159; Baruch-Mordo et al. 2013, p. 237; Prochazka et al. 2017, p. 46). Therefore, to reduce this impact on the Bi-State DPS and its habitat, as described in the BSAP, land managers should consider management of pinyon-juniper encroachment in specific areas that would most benefit the Bi-State DPS (*e.g.,* lek sites, migration corridors, and brood-rearing habitat) and that is consistent with our understanding of a specific site's vegetation potential. The removal of trees conveys positive benefits to sage-grouse stemming from increased habitat availability, increased adult and nest survival, and ultimately overall improved population performance (Coates et al. 2017b, pp. 31–33; Sandford et al. 2017, p. 63; Severson et al. 2017, p. 53; Prochazka et al. 2017, p. 46; Olsen 2019, pp. 21–22).

(*9) Comment:* Several commenters suggest that fire is the most significant threat to the Bi-State DPS and that post-fire restoration is difficult. Alternatively, several other commenters suggest that fire is a natural process and does not constitute a complete loss of habitat for the Bi-State DPS because sage-grouse will use burned areas.

Our Response: In the Species Report (Service 2020, pp. 79–86) and in *Wildfires and Altered Fire Regime,* we address potential habitat changes that may be related to wildland fires and post-fire restoration activities. We agree that fire is a natural process on the landscape within the Bi-State area; however, we also note that we found that the ''too-little'' and ''too-much'' fire scenarios present challenges for the Bi-State DPS. In other words, in some locations, the lack of fire has facilitated the expansion of woodlands, especially into montane shrub communities. In other locations, recent fires have been followed by invasive-weed establishment facilitating a reoccurring fire cycle that restricts sagebrush restoration. These scenarios present challenges for the species. Still, although fires have occurred across the range of the Bi-State DPS historically and recently, we acknowledge that a sufficient amount of suitable habitat remains for sage-grouse use. Some of this remaining suitable habitat is threatened by additional fire because of adjacent invasive annual plants and woodland establishment, which can influence the frequency and intensity of future fire events. Further, impacts to remaining sagebrush habitat may be exacerbated due to interactions with other threats that are acting in the Bi-State area (see *Summary of Threats*). As a result of these impacts, conservation efforts are under way currently and into the future to reduce impacts associated with nonnative, invasive plants (*e.g.,* multiple BLM and USFS invasive weed management treatments in multiple PMUs), and woodland succession (*e.g.,* BLM, USFS, and NRCS treatments of phase I and II pinyon-juniper encroachment in all six PMUs) (Bi-State TAC 2014, *in litt.*).

Additionally, while short-term (and potentially long-term) impacts from fire events to sage-grouse are known to occur, including but not limited to habitat loss and population declines (Beck et al. 2012, p. 452; Knick et al. 2011, p. 233; Wisdom et al. 2011, p. 469), we agree that some information suggests sage-grouse use of burned habitat. Small fires may maintain a suitable habitat mosaic by reducing shrub encroachment and encouraging understory growth. However, without available nearby sagebrush cover, the broad utility of these sites is questionable (Woodward 2006, p. 65). For example, sage-grouse using burned areas were rarely found more than 60 m

(200 ft) from the edge of the burn and may preferentially use the burned and unburned edge habitat (Slater 2003, p. 63).

We recognize that fire is natural and the primary disturbance mechanism in the sagebrush ecosystem. We also recognize that sage-grouse will selectively utilize portions of burned habitat. However, the challenge that wildfire presents to the sustainability of the system remains, especially given the relatively limited and fragmented suitable sagebrush habitat present in the Bi-State area. Still, land managers within the range of the Bi-State DPS are currently implementing and will continue to implement conservation efforts into the future that are expected to reduce the potential impacts of wildfire as it relates to nonnative, invasive plants and pinyon-juniper encroachment (Bi-State TAC 2018, pp. 22–23).

(*10) Comment:* Several commenters suggested that climate change poses a significant impact to the Bi-State DPS and its habitat, including one commenter that stated we underestimated the impact that climate change and drought may have on the DPS.

Our Response: In the Species Report (Service 2020, pp. 86–94) and in *Climate,* we address potential impacts associated with climate change. We found that projected climate change and its associated consequences have the potential to affect sage-grouse and sagebrush habitat in the Bi-State area. The impacts of climate change interact with other stressors such as disease, invasive species, prey availability, moisture, vegetation community dynamics, disturbance regimes, and other habitat degradations and loss that are already affecting the species (Strzepek et al. 2010, p. 5; Walker and Naugle 2011, entire; Finch 2012, pp. 60, 80; IPCC 2014, p. 60; Ault et al. 2014, p. 7545; Garfin et al. 2014, p. 463; He et al. 2018, pp. 16–17; Reich et al. 2018, p. 21). In the 2015 withdrawal of our proposed rule, we concluded that the overall impact of climate change to the Bi-State DPS at this time is considered moderate. Neither the commenters nor others provided new information related to climate change that would result in a change in our analysis. Our conclusion of moderate impact from climate change may ultimately prove to be conservative, but we believe this is the most supportable conclusion given the inherent uncertainties associated with climate modeling, especially prediction concerning precipitation. Additionally, conservation efforts associated with the 2012 BSAP (such as grazing exclosures, changes to grazing management plans, prescribed fires, invasive plant control, mechanical treatments, and conservation of meadow habitats) are increasing resiliency such that the magnitude of climate changes impacts will be reduced into the foreseeable future. If in the future substantial new information becomes available as to the specific impacts that may be incurred by the Bi-State DPS associated with climate change, we will revisit this assessment.

(*11) Comment:* Several commenters stated that we should have proposed listing the Bi-State DPS of greater sage-grouse as an endangered species as opposed to a threatened species.

Our Response: Section 3 of the Act defines an endangered species as any species that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. With regard to the Bi-State DPS, we have identified a series of threats across the range of the Bi-State DPS that are resulting in the present or threatened destruction, modification, or curtailment of its habitat or range, and other natural or manmade threats affecting the DPS's continued existence. We have determined that, assuming current conditions continue into the future, these impacts are such that the DPS is likely to become an endangered species within the foreseeable future (*i.e.,* the definition of a threatened species).

Many of these impacts are cumulatively acting upon the Bi-State DPS and increase the risk of extinction, but not to such a degree that the DPS is in danger of extinction today (see Determination of Status for the Bi-State DPS, below). However, after consideration of partially completed projects and future conservation efforts that we have found to be highly certain to be implemented and effective (see Policy for Evaluation of Conservation Efforts When Making Listing Decisions, above), we conclude the Bi-State DPS is not in danger of becoming extinct throughout all or a significant portion of its range, and is not likely to become endangered within the foreseeable future (threatened), throughout all or a significant portion of its range. Therefore, the Bi-State DPS of greater sage-grouse does not meet the definition of a threatened or endangered species, and we are withdrawing the proposed listing, 4(d), and critical habitat rules for the Bi-State DPS.

(*12) Comment:* Some commenters were concerned about the effects of listing on mining and associated activities conducted under the General Mining Law of 1872. One commenter suggested that listing did not take into consideration Federal mining law and recognition of valid existing rights. Another commenter was concerned that there would be no assurances that development of a mining claim will result in the ability to mine it.

Our Response: In the proposed listing rule, we identified mining and associated activities to be a threat to the Bi-State DPS; however, today we consider it a less significant impact and one that does not occur across the entire Bi-State area. On federally managed land outside of designated wilderness and wilderness study area (approximately 92 percent of all federal lands (1,629,669 ha or 4,027,000 ac)), new mining may occur pursuant to the Mining Law of 1872 (30 U.S.C. 21 *et seq.*), which was enacted to promote exploration and development of domestic mineral resources, as well as the settlement of the western United States. It permits U.S. citizens and businesses to prospect hardrock (locatable) minerals and, if a valuable deposit is found, file a claim giving them the right to use the land for mining activities and sell the minerals extracted. Gold and other minerals are frequently mined as locatable minerals subject to the Mining Law of 1872. Federal agencies with jurisdiction over land where mining occurs will review mining and other actions that they fund, authorize, or carry out to determine if listed species may be affected in accordance with section 7 of the Act. Because we are withdrawing our proposed rule to list the Bi-State DPS and it will not be placed on the list of federally endangered or threatened species, consultations under section 7 of the Act will not be required specific to the Bi-State DPS.

As discussed above, potential exists for mining operations to expand both currently and into the future, but the scope of impacts from existing mining expansion is not considered extensive. We concluded that, by itself, mining is not currently considered a significant impact to the Bi-State population, though mining exploration continues, and mining activity could occur at any time in the future.

(*13) Comment:* Several commenters stated that they believe mining is not a threat to the Bi-State DPS. Alternatively, another commenter suggested impacts from mining are significant.

Our Response: In the Species Report (Service 2020, pp. 60–63) and in *Mining,* we address potential impacts associated with mining activities. Sage-grouse could be impacted directly or indirectly from an increase in human presence, land use practices, ground shock, noise, dust, reduced air quality, degradation of water quality and quantity, and changes in vegetation and topography (Moore and Mills 1977, entire; Brown and Clayton 2004, p. 2). However, these effects are theoretical, given that information relating sage-grouse response to mineral developments is not extensive. Neither the commenters nor others provided new information related to this threat. While we maintain that it is reasonable to assume a negative impact from mining on sage-grouse, based on the current extent and location of mineral developments in the Bi-State area, we conclude that mining is not considered a significant impact at this time. Mining is a potential future concern based on its potential to impact important lek complexes and population connectivity. It may also create effects that combine with other threats currently acting on the Bi-State DPS resulting in a higher degree of negative impact in the future, though not to the extent that the species will become endangered in the forseeable future. See the *Mining* section of the 2019 Species Report for a complete discussion of the potential effects of mining activities on the Bi-State DPS and its habitat.

(14) Comment: Numerous commenters suggested that our grazing and rangeland management assessment in the proposed listing rule is not accurate and requires additional clarification. Specifically, they suggested that: (1) Current livestock grazing is compatible with sage-grouse conservation in the Bi-State area, (2) a more clearly defined delineation is needed between past and present grazing impacts, and (3) additional delineation is needed among grazing animals (such as cattle, horses, sheep). Alternatively, several other commenters suggested that grazing and rangeland management are a significant threat to the Bi-State DPS's conservation and that this threat is not adequately controlled by existing management programs.

Our Response: In the 2019 Species Report (Service 2020, pp. 65–73) and in *Grazing and Rangeland Management,* we found that the majority of sage-grouse habitat in the Bi-State area is not significantly impacted by livestock grazing. Specifically, RHAs or their equivalents (the standard used by Federal agencies to assess habitat condition) have been completed on allotments covering approximately 81 percent of suitable sage-grouse habitat in the Bi-State area. Of the allotments with RHAs completed, 81 percent (n=97) are meeting upland vegetation standards, suggesting that approximately 352,249 ha (870,427 ac) out of approximately 563,941 ha (1,393,529 ac) of suitable sage-grouse habitat are known to be in a condition compatible with sagebrush community maintenance. Furthermore, of the allotments with RHAs completed, 45 percent are meeting riparian standards and 27 percent are not, with the remainder being unknown or the allotment not containing riparian habitat. Of those not meeting riparian standards (approximately 15 percent), livestock were a significant or partially significant cause for the allotment failing to meet identified standards while the remainders were attributed to other causes such as past mining activity or road presence. In each instance of an allotment not meeting standards due to livestock, remedial actions have been taken by the representative land managing agency (such as changes in intensity, duration, or season of use by livestock). Furthermore, while we have information on the class of livestock (*i.e.,* sheep, cattle) associated with any given allotment, we did not analyze these allotments independently based on this difference.

While it is true that types of livestock will use vegetation communities differently, meaning some animals consume more shrubs and others consume more grasses, RHAs or their equivalents are a measure of the condition of the allotment against a desired condition, which includes among other things fish and wildlife habitat condition. Given that RHAs in the Bi-State area consider suitable sage-grouse habitat condition as part of their evaluation, including shrub and herbaceous cover, we consider RHAs as a unit of measure sufficiently fine-scaled to be informative. Ultimately, based on data contained within RHAs, we concluded that modern livestock grazing is not a significant impact on sage-grouse habitat.

We also note that historical impacts from livestock grazing and impacts caused by feral horses are apparent, but data to assess these impacts are limited. None of the commenters provided additional data to assist with this assessment. In total, we believe that historical impacts (past grazing and other land uses) and impacts from feral horse use is apparent in local areas, but we consider current management to be sufficient to address these issues.

(15) Comment: Several commenters provided information pertaining to population performance and size across the DPS as a whole as well as for individual Population Management Units.

Our Response: While we appreciate these updates, all of these comments and the data contained within them have been considered in the associated 2019 Species Report as well as within this document. Furthermore, we note that the most recent final results stemming from the IPM (Coates et al. 2020, entire) are similarly incorporated into our 2019 Species Report and this document. The data provided by commenters have either been updated by incorporating more recent data into the analysis or by making slight alterations to the modelling approach. Many preliminary research results are presented to the Local Area Working Group during regularly occurring meetings. These results, however, are often prone to change as the research is finalized. Therefore, the numbers presented in the 2019 Species Report and incorporated into this document represent the most up-to-date finalized findings and represent the best scientific and commercial data available.

(16) Comment: At least one commenter questioned the efficacy and rationale for the currently ongoing translocation effort in the Parker Meadows subpopulation. The commenter specifically expressed concern over the potential impact this action may have on the source population and further questioned whether the habitat in the Parker Meadows area is sufficiently suitable for the reintroduction.

Our Response: The 2012 Action Plan identified augmentation of the Parker Meadows subpopulation via translocation as a conservation action. This effort was identified as a need based on the small size of the subpopulation, genetic information highlighting relatively low genetic diversity in the subpopulation, and recent monitoring results identifying low hatchability of clutches (females were laying eggs but these eggs were not hatching, suggesting eggs were either going unfertilized or genetic anomalies were inhibiting some aspect of egg development). To restore genetic and demographic health to the subpopulation, birds from outside the subpopulation were captured and moved to the Parker Meadows site. The overarching intent of this action was to conserve and enhance connectivity between PMUs, specifically between the South Mono and Bodie PMUs.

Prior to initiating this effort, members of the Bi-State TAC conducted a site visit to assess habitat condition. Habitat was deemed to be of suitable condition but for the occurrence of a limited number of conifer trees that had become established in proximity to the lek and brood-rearing meadow. These trees were removed prior to the augmentation. In addition, the Bi-State TAC evaluated the potential impact the source population may incur, due to the removal of birds, via the IPM. Essentially, the study evaluated how altering adult female and brood survival for the source population impacted population performance. The source population was the Bodie PMU, and the results suggested the removal of birds from this location would not affect overall population growth within this PMU. We evaluated the potential impact from this action in the 2019 Species Report, within the *Scientific and Educational Uses* section (Service 2020, pp. 101–104).

Ultimately, measuring the success of this translocation effort will require additional time. Preliminary results suggest that translocated birds are remaining in the Parker Meadows area at an increasing rate, probability of nest initiation and nest success have increased, brood success is on par with the remainder of the DPS, and lek counts have increased over the past 2 years.

(17) Comment: Several commenters expressed concern over the estimated effective population size of the DPS as a whole as well as for specific populations.

Our Response: As discussed in *Small Population Size and Population Isolation,* studies suggest effective population size should exceed 50 to 100 individuals to avoid short-term extinction risk caused by inbreeding depression, and mathematical models suggest that effective population size should exceed 500 individuals to retain evolutionary potential and avoid long-term extinction risk (Franklin 1980, entire; Soule 1980, entire). However, some estimates of an effective population size necessary to retain evolutionary potential are as high as 5,000 individuals, although these estimates are thought to be highly species specific and influenced by many extrinsic factors (Lande 1995, p. 789). The effective population size of the Bi-State DPS in 2018 was between 330 and 661 birds (Table 2; Service 2020, pp. 119–121).

We agree that the size of the populations and the relative degree of isolation among populations within the Bi-State area is a concern to species conservation as it can exacerbate the effects of genetic issues, stochastic events, and other threats to the DPS. However, as discussed above, the current genetic diversity present in the Bi-State area population is comparable to other populations, suggesting that the differences are not due to a genetic bottleneck or founder event (Oyler-McCance and Quinn 2011, p. 91; Oyler-McCance et al. 2014, p. 8). The available genetic information demonstrates that the Bi-State sage-grouse are both discrete from other greater sage-grouse populations and are genetically unique. Further, a significant impetus of the 2012 Action Plan was to facilitate connectivity among populations across the DPS. While we remain concerned regarding isolation of these populations, we believe that effective implementation of the 2012 Action Plan will help alleviate concerns over loss of genetic diversity or the accumulation of deleterious alleles.

(18) Comment: Several commenters identified new potential threats to the DPS, which were not apparent at the time of our proposed listing in 2013. Specifically, these include a potential change to how LADWP manages their lands in Long Valley, the potential for additional development within the designated West-wide Energy Corridor, a potential new hydro-pump storage energy development in the White Mountains PMU, and the development of a Programmatic Environmental Impact Statement pertaining to fuel break development in the Great Basin (PEIS).

Our Response: We appreciate these updates on potential threats and note that each of these identified new threats has been considered in the associated 2019 Species Report as well as in this document.

The Record of Decision on the West-wide Energy Corridor was signed in 2009 by the Secretaries of the Interior and Agriculture. This action was challenged in court the same year, and a settlement was reached in 2012. One aspect of the settlement was a reevaluation of the corridors identified in 2009, and the public scoping for this assessment was reopened in the past year. Thus, we have been aware of this potential activity for nearly a decade but recognize the renewed interest in its potential impact to the Bi-State DPS.

A section of these designated corridors passes through the Mount Grant PMU. This corridor section currently has a high-voltage transmission line in place, but additional development may take place assuming the completion of this NEPA action. While we recognize that additional development may occur and may cause impacts to this population, we do not have any knowledge of, nor did the commenters provide, additional data informing the likelihood of future development. The reevaluation of these corridors is currently ongoing per the 2012 settlement. This reevaluation may, in fact, result in revisions to the 2009 corridor proposals. We do not have sufficient certainty at this time of what the potential impacts of this action may have on the Mount Grant PMU.

The LADWP is currently evaluating alterations to the amount of water it has traditionally provided for agricultural use in Long Valley. This water allocation has most commonly been used to irrigate portions of Long Valley to benefit forage production for local ranching operations. An ancillary benefit of this practice has been the enhancement of sage-grouse brood-rearing habitat. Thus, changes to this practice could influence the sage-grouse population in Long Valley by negatively impacting chick survival. To address these type of concerns, in June of 2019, LADWP sent a letter to the Service reaffirming their commitment to their 2013 Conservation Strategy (implemented by a memorandum of understanding with FWS), through which LADWP supports sage-grouse conservation by, in part, utilizing its water resources to maintain and improve important habitat for sage-grouse on their lands; and to continue using a collaborative, science-based, and adaptive management approach to achieve the best habitat results. Therefore, we recognize the potential impacts that alteration to water supplies in Long Valley may have on the local sage-grouse population, but we consider this to be a manageable stressor, in light of LADWP's continuing commitment toward Bi-State DPS conservation.

In 2019, an application was submitted to the Federal Energy Regulatory Commission to build and maintain a new hydro-pump storage facility within the White Mountains PMU, representing a potentially new threat to the DPS. However, this application was subsequently withdrawn. Therefore, the Service does not consider this formerly proposed facility to be an active threat to the Bi-State DPS.

In 2017, the BLM published a notice of intent to prepare the development of a Great-Basin-Wide Fuel Break PEIS. The purpose of this document is to expedite the development, enhancement, maintenance, and utilization of fuel breaks to prevent or minimize the likelihood of large-scale wildfire events, which are becoming more prevalent in the Great Basin. This would be accomplished by establishing strategic fuel breaks wherein fire fighters could stage and anchor suppression activities to increase quicker suppression response times. We recognize that Bi-State DPS habitat is included within the scope of the PEIS. Further, we recognize that fragmentation of habitats through the establishment of fuel breaks may negatively impact some wildlife species including greater sage-grouse (Shinneman et al. 2019, pp. 4–7).

There are trade-offs between the effects of habitat lost to fire and habitat lost or degraded by the establishment of a fuel break. Because the plan has not yet been prepared, it is difficult to fully assess its impacts on sagebrush habitat. Still, we anticipated that, after the PEIS is complete, site-specific NEPA analysis (or possibly categorical exclusion or determinations of NEPA adequacy analyses) will still be developed, as the PEIS does not detail the specific locations where these fuel breaks will be established. Given current direction provided by Land Use Plans in the Bi-State area, identified ''Best Management Practices'' outlined in the PEIS, and the existing collaboration among the EOC, TAC, and LAWG, we contend that future discussions pertaining to the potential establishment of fuel breaks in the Bi-State area will be robust and afford substantial deference to sage-grouse as well as the integrity of the entire sagebrush ecosystem. Therefore, we do not consider the PEIS to negatively impact the species, and thus do not consider it in our threats analysis.

(19) Comment: One commenter questioned the feasibility of ongoing financial commitments provided by the Bi-State EOC toward the implementation of the 2012 BSAP.

Our Response: The BSAP identifies threats to the conservation of sage-grouse in the Bi-State area and delineates specific conservation actions to alleviate those threats. In 2014, the Bi-State EOC pledged to fund these actions at a value in excess of 45 million dollars over a 10-year timeframe. We recognize that funding commitments provided by Federal agencies over a 10-year time horizon may appear speculative, given these agencies typically work with annual funding cycles driven by the U.S. Congress appropriations process; however, agency managers still retain substantial discretion to forecast and plan how to utilize appropriations in a longer term strategy. From 2014 through 2018, approximately 26 million dollars have already been allocated, representing approximately 57 percent of pledged funds (Bi-State TAC 2018, p. 35). Furthermore, agency partners in the EOC recently updated their respective letters of commitment to continue funding for the next 5 years. Given the robust collaborative effort in the Bi-State area in combination with the realized funding track record over the past 5 years and recent reiterations of commitments for future funding, we consider the likelihood of future commitments to be high.

(20) Comment: One commenter suggested we should assess human population density on a county-by-county basis to determine how it compares to the four people per 1 km² threshold established by Aldridge et al. (2008).

Our Response: In 2008, Aldridge et al. (2008) published a peer-reviewed scientific article, which evaluated a number of predictive variables to compare locations of extant versus extirpated sage-grouse populations. We note that this correlative study does not imply causation but is a frequently used approach in wildlife studies and that this type of approach can be highly informative.

As discussed in *Urbanization and Habitat Conversion,* in modeling several measures of human population on greater sage-grouse persistence, including current population density, historical population density, and human population growth, the best predictor of sage-grouse extirpation was human population density in 1950 (Aldridge et al. 2008, p. 985). This finding suggests that human development has had long-term impacts on habitat suitability and sage-grouse persistence. Extirpation was more likely in areas having a moderate human population density of at least four people per 1 km² (10 people per 1 mi²). Furthermore, increase in human populations from this moderate level did not infer a greater likelihood of extirpation, likely because much of the additional growth occurred in areas no longer suitable for sage-grouse (Aldridge et al. 2008, pp. 991–992).

In the 2019 Species Report, we examined the potential likelihood of population changes that may influence urbanization and habitat conversion in the future, by reviewing the most recent U.S. Census Bureau data (U.S. Census Bureau 2018). We found five of eight counties in the Bi-State area have documented declines in the estimated number of people present between 2010 and 2017: Alpine, Mono, and Inyo Counties in California, and Mineral and Carson City Counties in Nevada. In addition, all of these counties except Carson City, Nevada, support substantially fewer than four people per 1 km² (10 people per 1 mi²). The remaining three counties in the Bi-State area have seen human population increases over the past decade, ranging from 2.8 percent for Douglas County, Nevada, and 4.1 percent for Lyon County, Nevada, to 8.4 percent for Esmerelda County, Nevada (U.S. Census Bureau 2018). While Esmerelda County still contains substantially fewer than four people per km² (four people per 0.4 mi²), both Lyon and Douglas Counties, Nevada, have from two to six times that population density.

Although we do not have specific information on possible future developments from each of these counties with documented human population increases, we are aware that recent development levels are reduced as compared to the past. Obviously, this metric can be informative but potentially misleading or unsatisfying. Frequently, counties have high- and low-density areas such as cities and towns or more rural developments. Evaluating the number of people per area does not capture the true distribution of people across the landscape. So, while it is reasonable to use the Aldridge et al. (2008) study to explore similarities or differences among locations, two counties with the same density of people can have differing levels of effects to sage-grouse based on the pattern of development.

(21) Comment: One commenter suggested we should invite and interview Native American tribal partners to share their knowledge of historical and pre-historical occurrence of sage-grouse in the Bi-State area.

Our Response: We agree that our Native American partners have a rich oral and written history in the Bi-State area, and we have been working with them since 2014 to incorporate their knowledge into the Bi-State collaboration. The first milestone of this endeavor occurred in 2016 in the form of a Traditional Ecological Knowledge Summit intended to engage and learn from the local and more broadly dispersed Native American Tribes in the Great Basin on sage-grouse history and conservation and the cultural significance of pinyon pine trees. This well-attended event presented an opportunity for the dissemination of traditional knowledge and subsequently led to the establishment of the Bi-State Traditional Natural Resources Committee. The intent of this committee is simple, to expand the breadth of the Bi-State collaboration such that decisions and actions are informed by and take into consideration Native American concerns and insights. We are pleased to further expand the Bi-State collaborative through the participation of Native American tribes and agree that inclusion of traditional knowledge is an imperative. With respect to this listing decision process specifically, we extended an invitation to Tribal partners to review and comment on our 2019 Species Report prior to its completion, but we did not receive any responses.

(22) Comment: One commenter stated that we must consider the best available science on impacts to sage-grouse wintering habitats and map Bi-State sage-grouse wintering habitat to assess threats to it. Further, they stated this is of critical importance because wintering habitats may be found outside habitats designated on the basis of breeding and nesting habitats.

Our Response: We concur that an understanding of wintering habitats is important to conservation and management of the Bi-State DPS. We further agree that mapping of wintering habitat would be useful to assess threats. However, we are required to make our determination based on the best scientific and commercial data available at the time of our rulemaking, and information on wintering habitats as well as maps of wintering habitat are not currently available. In preparing this document, we considered the best scientific and commercial data available regarding the Bi-State DPS to evaluate their potential status under the Act. We solicited peer review of our evaluation of the available data, and our peer reviewers supported our analysis. Science is a cumulative process, and the body of knowledge is ever-growing. In light of this, the Service will always take new research into consideration into future analyses of the Bi-State DPS, but we are required to publish a final decision on the Bi-State DPS in the **Federal Register** by April 1, 2020. If plausible new research supports amendment or revision of this withdrawal document in the future, the Service will consider the new information consistent with the Act and our established work priorities at that time.

(23) Comment: One commenter suggested we should present up-to-date acreage for private lands covered by conservation easements and provide descriptions of projects funded by the NRCS.

Our Response: We estimate that, since 2003, approximately 10,415 ha (25,737 ac) of private land, which may provide suitable habitat for sage-grouse in the Bi-State DPS, are currently enrolled in various easement programs. The easements are targeted primarily at development and water rights and vary in length from 30 years to in perpetuity. The majority of these easement lands are located in the Bodie PMU, with the remainder of easements occurring in the Desert Creek-Fales, South Mono, Pine Nut, and White Mountains PMUs. In addition, we estimate that approximately 9,737 ha (24,060 ac) of previously private land within the Bi-State DPS has been acquired by State and Federal agencies over this same timeframe. In total, approximately 20,153 ha (49,800 ac) of land, either through conservation easements or acquisitions, has been substantially protected from urbanization challenges. These acres represent approximately 31 percent of total private lands containing mapped sage-grouse habitat across the Bi-State. Furthermore, 12,243 ha (30,254 ac) of the total 20,153 ha (49,800 ac) of easements and acquisitions completed since 2003 have been accomplished since the adoption of the BSAP in 2012. Further, we note that approximately 7,284 ha (18,000 ac) of private lands have funding obligated for conservation easements, but these transactions are still in progress. An effort to acquire approximately 5,870 ha (14,500 ac) of lands in the Pine Nut PMU by the Carson City BLM has been approved and is anticipated to finalize in spring of 2020.

The NRCS, via the Farm Bill, can fund restoration actions on private and public lands across the Bi-State DPS. The suite of actions they can fund is broad, but based on a Conference Report with the Service in 2010, there are three main types of conservation practice standards employed: management, vegetative, and structural. Examples of practices that fall under these three main categories include (but are not limited to): (1) Prescribed grazing assistance, upland and meadow management, access management; (2) forest slash management, cover crop, weed control, seeding; and (3) infrastructure, fish and wildlife structure, obstruction removal. While a variety of these practices have been employed in the Bi-State area, in general the preponderance of NRCS's efforts in the Bi-State area have focused on securing conservation easements and conifer removal. Since 2010, NRCS has placed into easement approximately 8,741 ha (21,600 ac) of private lands. In addition, over this same timeframe, NRCS has funded the removal of approximately 4,649 ha (11,488 ac) of conifer trees for the benefit of the species across multiple PMUs.

(24) Comment: Several commenters expressed concern over population performance in some subpopulations and how this may result in range contraction of the DPS. Further one commenter submitted that we evaluate lek count data collected by the States and incorporate it into population trend analysis.

Our Response: We agree that some of the smaller peripheral populations experiencing population declines may result in range contractions in the Bi-State DPS as a whole. A recent analysis considering data from the past 24 years on four populations found that some populations in the Bi-State DPS are contracting their habitat use, with contractions most apparent in the Fales, Long Valley, and Sagehen populations (Coates et al. 2020, p. 44). Over this same time, distributional area in the Bodie Hills has increased (Coates et al. 2020, p. 44). Across the entire Bi-State area, these results suggest a median net loss of 858 ha (2,120 ac) annually. Additionally, recent changes in distribution (past 11 years) suggests a pattern similar to those described for the long-term spatial trend analysis.

This short-term analysis also considered additional populations (Coates et al. 2020, p. 51). These results suggest contractions of total area for the Desert Creek, Long Valley, Mount Grant, Pine Nut, Sagehen, and White Mountains populations and expansion in the Bodie Hills, Fales, and Parker Meadows populations. Similar to the long-term analysis, the net effect over the 11 years was a loss of total area occupied over time, which corresponds to a median loss of 2,312 ha (5,713 ac) annually since 2008 (Coates et al. 2020, p. 51). These apparent declines in certain populations and habitat use over the shorter time period was likely influenced by the fact that the DPS is in the downward portion of their cyclic population growth. We also note that a significant drought affected this DPS from 2011 to 2015, and based on our understanding of the drivers behind sage-grouse population cycles, this drought condition has very likely affected recent population performance. We will continue to monitor the condition of these smaller, peripheral populations while working with our partners to implement beneficial actions from the BSAP.

As part of our assessments of the Bi-State DPS, we request and review lek count data from NDOW and CDFW. We recognize that this data can be informative but further acknowledge that these data have limitations. For example, sage-grouse are known to forgo breeding activity during years of poor conditions, such as drought. Therefore, an individual animal may still be present in the population but does not attend the lek and therefore is not counted. While the data in this instance may suggest decline, it is misleading. There is support, however, that over a longer timeframe (8–10 years), lek counts act as a reasonable index to population performance. Modeling these data helps alleviate concerns over the inherent errors associated with lek counts. Further, integrating the observations with additional data such as that collected via telemetry studies makes for a much more robust approach to understanding population dynamics. Ultimately, we do not dismiss lek count information, but we contend that incorporating this information into a more holistic approach—such as the Integrated Population Model for the Bi-State DPS—is a more informative approach to understanding population abundance and trend.

(25) Comment: One commenter suggested we review Smith and Beck (2017) and contends that sagebrush treatments do not benefit greater sage-grouse and further that pinyon-juniper treatments also disturb sagebrush habitat, implying pinyon-juniper treatments do not benefit sage-grouse.

Our Response: We appreciate this information. We agree with the findings in this report and submit that these results have been supported by others investigating habitat selection by greater sage-grouse. While the removal of sagebrush to benefit herbaceous understory development was a relatively frequent activity in the 1940s to the 1970s (Knick et al. 2011, p. 220), this form of action has been greatly curtailed in the past two decades. There may still be benefits to this type of action, and it is still conducted sporadically, but recent treatment methodology has been to open small gaps in the shrub canopy to alter the mosaic of the landscape in hopes of improving brood-rearing habitat. The validity of this treatment approach remains uncertain, and our understanding of the appropriate sage-grouse habitat mosaic remains untested.

The intent of pinyon-juniper removal projects is to facilitate sagebrush community conservation and improve the suitability of a location for sage-grouse. Sage-grouse avoid tree communities, and their fitness is impacted by exposure to it. Furthermore, left unmanaged, trees will ultimately out-compete understory species (shrubs and herbaceous), resulting in a homogenous forested vegetation condition. Restoration of the shrub community at this point becomes extremely challenging. Targeted pinyon-juniper treatments in the Bi-State area are focused on, what is termed, phase I and phase II encroachment conditions. Phase I refers generally to conditions where trees are small (shrub high) with less than 10 percent canopy cover and the shrub community remains intact. Phase II occurs as the tree canopy cover increase (10–30 percent), trees increase in size, and the shrub community begins to decrease in dominance.

Treatments of phase I communities is typically accomplished with garden pruners and pedestrian locomotion. This type of treatment would have negligible impact on the shrub community due to disturbance. As trees begin to increase in size, chainsaws and machinery are employed. In these instances, disturbance to the shrub community may occur but specific prescriptions and best management practices are followed to alleviate this exact concern. Shrub community disturbance in these instances do not equate to the treatments described by Smith and Beck (2017), where shrubs were specifically targeted for removal across large acreages. Finally, the potential short-term and restricted impact to the shrub community caused by tree removal treatments are outweighed by the long-term benefit gained through increasing and improving sage-grouse habitats.

(26) Comment: Several commenters expressed concern that economic development will be negatively impacted by listing and suggested that it is necessary for the Service to conduct an analysis of the impacts that listing a species may have on local economies prior to issuance of a final rule. Alternatively, one commenter submitted that the local economy will be positively benefited.

Our Response: Under the Act, the Secretary shall make determinations whether any species is an endangered species or a threatened species solely on the basis of the best scientific and commercial data available. Thus, the Service is not allowed to consider the economic impact of listing when making determinations whether a species is an endangered species or a threatened species.

Determination of Status for the Bi-State DPS

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. For a more detailed discussion on the factors considered when determining whether a species meets the definition of ''endangered species'' or ''threatened species'' and our analysis on how we determine the foreseeable future in making these decisions, see *Regulatory Framework,* above.

Status Throughout All of Its Range

In this document, we reviewed the biological condition of the Bi-State DPS and its resources, and the influence of those resources on the species' overall viability and the risks to that viability. We presented summary evaluations of 11 threats analyzed in the Species Report: urbanization and habitat conversion (Factor A); infrastructure (Factor A); mining (Factor A); grazing and rangeland management (Factor A); nonnative invasive plants and native woodland succession (Factor A); wildfires and altered fire regime (Factor A); climate change, including drought (Factor A); recreation (Factor E); disease (Factor C); predation (Factor C); and small population size and population isolation (Factor E). We also evaluate the adequacy of existing regulatory mechanisms (Factor D) in ameliorating the magnitude and effect of threats. Please see the Species Report (Service 2020, pp. 39–136) for a more detailed discussion of each threat.

In the Species Report, we also presented our evaluation of four additional threats: Renewable energy (Factor A), commercial and recreational hunting (Factor B); scientific and educational uses (Factor B); and contaminants (including pesticides) (Factor E). In the species report, we concluded that, although these threats are currently having some impact on individual sage-grouse and their habitat, their overall effect now and into the future is expected to be minimal. We did not present summary analyses of those threats in this document but, did consider them in *Summary of Threats* and consider them now as a part of our determination of status.

When we issued a proposed rule to list the Bi-State DPS in 2013 (78 FR 64358, October 28, 2013), we found that the species was likely to become endangered in the foreseeable future throughout all of its range due to threats associated with native woodland succession, the wildfire-invasive plant cycle, effects associated with small population size, and increased fragmentation of sagebrush habitat in the Bi-State area. Many of these threats remain on the landscape today. Pinyon-juniper encroachment (Factor A) continues to alter sagebrush habitat in the Bi-State area. Effects due to wildfire (Factor A) and nonnative invasive plants (cheatgrass) (Factor A) also continue to alter and degrade sagebrush habitat. The effects of drought (Factor A) are exacerbating impacts of wildfire, invasive plants, and altered wildfire regimes across the Bi-State area. In the future, climate change (Factor A) will result in warmer temperatures, altered precipitation regimes, and more frequent droughts. These changes will likely result in a greater intensity of these other threats into the foreseeable future. Drought in particular appears to have a strong influence on population dynamics and population cycling in the Bi-State DPS (Coates et al. 2020, pp. 27, 29).

Areas across the Bi-State DPS are experiencing combined impacts of threats from wildfire, invasive species, urbanization (Factor A), infrastructure effects (Factor A), and recreation (Factor E); these effects may be exacerbated by population isolation and discontinuous population structure (Factor E). Regulatory mechanisms (Factor D), particularly RMPs and land management plans, are helping to ameliorate some threats across the Bi-State DPS. These plans provide specific direction for management of the DPS and its habitat, including decreasing habitat disturbance (direct effects) and noise and other impacts (indirect effects), through provisions addressing recreation, grazing, weeds, wild horses, minerals, and fire management.

Impacts associated with Factor B (commercial and recreational hunting, and scientific and educational uses) are having very minor effects the Bi-State DPS now, and they are not expected to substantially increase within the foreseeable future. Predation (Factor C), particularly by ravens, is impacting the DPS, but not at a magnitude where resiliency is significantly affected. However, as habitat degradation and fragmentation continue to increase, the magnitude of the threat of predation could increase into the future.

The key distinction between now and the 2013 proposed listing rule is the implementation of the 2012 BSAP, which began implementation in 2014 with the publication of the 2014 EOC report and the letters of commitment from partner agencies. Ongoing and future conservation efforts associated with the BSAP are likely to increase habitat quantity, quality, and connectivity, and enhance resiliency, redundancy, and representation. Efforts associated with the BSAP will:

(1) Protect and restore critical brood-rearing habitat (reduces impacts from development/habitat conversion, grazing and rangeland management, and effects resulting from climate change).

(2) Restore habitat impacted by nonnative, invasive species (*e.g.,* cheatgrass) and pinyon-juniper encroachment (reduces impacts from nonnative, invasive and certain native plants, wildfire, predation, and effects resulting from climate change).

(3) Improve our understanding of sage-grouse populations, structure, etc., to: (a) Prioritize management actions related to synergistic impacts on already fragmented habitat (reduced impacts such as infrastructure, urbanization, and recreation), such that management efforts occur in locations that benefit the DPS the most; and (b) develop and implement sage-grouse translocations from stable subpopulations to other small subpopulations that may be experiencing a high risk of extirpation (reduces impacts from small population size and population structure).

These measures will likely increase the number of sage-grouse and resiliency of populations throughout the Bi-State DPS. These efforts to stop and reverse habitat loss and fragmentation will make small populations of Bi-State sage-grouse less susceptible to the effects of habitat loss, degradation, and fragmentation. They will expand the amount of protected habitat in critical brood-rearing habitat areas as well as restore currently unsuitable habitat in areas utilized for dispersal and colonization. As a whole, conservation efforts associated with the BSAP are expected to increase species redundancy and the Bi-State's ability to withstand future random, stochastic events.

Additionally, in recent years, we have gained increased certainty of the effectiveness of pinyon-juniper removal on restoring sagebrush habitat and the use of restored areas by sage-grouse (Sandford et al. 2017, p. 63; Severson et al. 2017, p. 53; Olsen 2019, pp. 21–22). Further, sage-grouse using restored areas had significantly increased survival and brood success in treated versus control areas, with population growth was 11.2 percent higher in treatment than in control sites within 5 years of conifer removal (Olsen 2019, pp. 21–22).

Recent trend analyses have given us a stronger understanding of the population dynamics of the Bi-State DPS. The Bi-State DPS appears to be undergoing population cycling, which is typical of sage-grouse populations rangewide. The most recent study concluded that the DPS, as a whole, experiences stable trends over all three time periods studied, and that in the period 1995–2018, the DPS increased by 2 percent a year (95 percent CRI = 0.74–1.42) (Coates et al. 2020, p. 25). Although the Bi-State DPS experienced periods of decline, these declines were offset by later periods of population growth (Coates et al. 2020, p. 25). Overall, the modelled probability of extirpation of the Bi-State DPS over the next 10 years is very low (1.1 percent; Coates et al. 2020, Table 1). It is important to note that individual population trends of some populations within PMUs have declined, and areas such as Sagehen and Parker Meadows (both in the South Mono PMU) have high probabilities of extirpation over the next 10 years, though the extirpation probability of the South Mono PMU is only 3.8 percent (Coates et al. 2020, Table 1). Longer-term extirpation probabilities are not available for all PMUs, but the 30-year probabilities of declining below 50 males for the North Mono Lake area (the Desert-Creek Fales, Bodie, and Mount Grant PMUs) and for the South Mono PMU were both 8 percent (Garton et al 2015, p. 14). Conservation efforts are in place to help offset declining populations such as the translocation of broods to Parker Meadows, which has shown some early signs of success. Conservation measures in other areas, including post-fire restoration, wild horse gathers, fuel reduction treatment, and pinyon-juniper removal, are further reducing the magnitude of threats.

Many of the conservation efforts associated with the BSAP have only been completed in recent years or are in the process of being completed. As discussed in more detail in our full PECE analysis, 142 of the 159 identified actions in the BSAP have been initiated and are in stages of completion, meaning they are in progress, ongoing, occur annually, or have been evaluated as part of the planning process (Bi-State TAC 2018, p. 45), but have not necessarily been completed. Thus, the full benefits of the conservation actions may not yet be achieved or apparent in sage-grouse population growth rates or in probabilities of extirpation, which are calculated by projecting past trends into the future. Some positive results are already apparent. For example, the translocation effort in Parker Meadows began in 2018 and has shown some early signs of success in improved reproductive success and recruitment. Overall, as described in our PECE analysis (Service 2019, entire), based on studies showing the effectiveness of other conservation actions (such as pinyon-juniper removal) and on detailed implementation schedules provided by agencies participating in the BSAP, we have sufficient certainty that conservation efforts outlined in the BSAP will be implemented and effective, and will increase the viability of the species into the future.

The BSAP does not remove or eliminate all threats to the species, and we expect impacts from cheatgrass, pinyon-juniper encroachment, altered wildfire regime, and climate change to continue to act on the species into the foreseeable future. Overall, however, we find that the BSAP and existing regulatory mechanisms are reducing the level of threats and increasing population resiliency across the Bi-State DPS.

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we conclude that, due to the effects of conservation actions as analyzed under our PECE policy, the threats impacting the Bi-State DPS of the greater-sage grouse have been greatly reduced. Thus, after assessing the best available information, we conclude that the Bi-State DPS is not in danger of extinction throughout all of its range. We, therefore, proceed with determining whether the Bi-State DPS is likely to become so within the foreseeable future.

Threats such as wildfire and altered fire regimes, climate change, nonnative invasive plants and native woodland succession, recreation, and others are expected to continue or increase into the future. Within the foreseeable future, we expect the individual and combined impacts of these threats to continue to increase. In particular, effects associated with climate change, such as drought, will continue to degrade habitat supporting the Bi-State DPS. However, as noted above, actions associated with the BSAP are expected to increase resiliency, redundancy, and representation of the Bi-State DPS, increasing the overall viability of the DPS such that they will be able to withstand the increased magnitude of threats into the foreseeable future. Thus, after assessing the best available information, we conclude that the Bi-State DPS is not likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. Having determined that the Bi-State DPS is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so within the foreseeable future in a significant portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the species' range for which there is substantial information indicating that: (1) The portion *may* be significant; and, (2) the species *may* be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. Conversely, we emphasize that answering both of these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so within the foreseeable future throughout a significant portion of its range—rather, it is a threshold step to determine whether a more-detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the ''significant portion of the range'' prongs: (1) The portion is significant and (2) the species is, in that portion, either in danger of extinction or likely to become so in the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both prongs would the species warrant listing because of its status in a significant portion of its range.

At both stages in this process—the stage of screening potential portions to identify any that warrant further consideration, and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the ''significance'' question or the ''status'' question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

For the Bi-State DPS, we chose to address the status question (*i.e.,* identifying portions where the Bi-State DPS may be in danger of extinction or likely to become so in the foreseeable future) first. To conduct this screening, we considered whether any of the threats acting on the DPS are geographically concentrated in any portion of the range at a biologically meaningful scale. We examined the following threats throughout the range of the DPS: Urbanization and habitat conversion (Factor A); infrastructure (Factor A); mining (Factor A); grazing and rangeland management (Factor A); nonnative invasive plants and native woodland succession (Factor A); wildfires and altered fire regime (Factor A); climate change, including drought (Factor A); recreation (Factor E); disease (Factor C); predation (Factor C); renewable energy (Factor A), commercial and recreational hunting (Factor B); scientific and educational uses (Factor B); pesticides and other contaminants (Factor E), as well as the potential for effects from small population size (Factor E).

We identified one portion of the Bi-State DPS, essentially the Pine Nut PMU, that is experiencing a concentration of the following threats: Urbanization, infrastructure, wildfire (and associated isolation and fragmentation of populations), cheatgrass, livestock and feral horses, nonnative woodland succession, and recreation. Although these threats are not unique to this PMU area, they are acting at a greater intensity here (*e.g.,* higher risks from cheatgrass invasion created by more frequent wildfires), either individually or in combination, than elsewhere in the range. In addition, the PMU's small population size (usually less than 100 birds), coupled with the information suggesting this unit has a high projected probability of extirpation over the next 10 years (69.7 percent; Coates et al. 2020, Table 1), leads us to find that this portion meets the screening criteria of whether substantial information exists indicating the population occurring here may be threatened or endangered.

We then proceeded to the significance screening question, asking whether there is substantial information indicating that this portion of the range (*i.e.,* the Pine Nut PMU) *may* be significant. As an initial note, the Service's most recent definition of ''significant'' within agency policy guidance has been invalidated by court order (see *Desert Survivors* v. *Dep't of the Interior,* No. 16–cv–01165 (N.D. Cal. Aug. 24, 2018). Therefore, for purposes of this analysis the Service is screening for significant portions of the range by applying any reasonable definition of ''significant.'' Biological importance/ significance is often considered in terms of resiliency, redundancy, or representation.

We evaluated the available information about the portion of the DPS that occupies the Pine Nut PMU in this context, assessing its significance in terms of these conservation concepts, and determined the information did not substantially indicate it may be significant. Sage-grouse in this PMU exhibit similar habitat use and behaviors to sage-grouse in the remainder of the Bi-State DPS; thus, there is no unique observable environmental usage or behavioral characteristics attributable to just this area's population. While unique genetic characteristics have been documented in the PMU's birds, including haplotypes not present elsewhere in the DPS, particularly in the northern portion (Oyler-McCance et al. 2014, pp. 1303, 1308), we note that each of the five other populations in the DPS also exhibit unique genetic characteristics and haplotypes. So although there is genetic differentiation between the Pine Nut PMU and other PMUs, we found no information indicating that the Pine Nut PMU's genetic characteristics represent a unique or significant adaptive capacity compared to the remainder of the DPS.

In addition, the Pine Nut PMU has the smallest number of birds compared to the other PMUs in the DPS, making up approximately 5% of the total population (see Table 1 above), and there is very limited movement of these birds into occupied areas of other PMUs. For the northern portion of this PMU, which has very few birds and little to no lek attendance reported in recent years (see the description of the Pine Nut PMU in *Range and Population Estimates* above), there has been no detected movement of birds to other PMUs. There is some movement of birds between the southern portion of Pine Nut PMU and the Desert Creek-Fales PMU and the Bodie PMU to the south, but this has involved only very few birds.

Overall, we found no substantial information that would indicate the Pine Nut PMU may be significant. While the Pine Nut PMU provides some contribution to the DPS's overall ability to withstand catastrophic or stochastic events (redundancy and resiliency, respectively), and to adapt to changing environmental conditions (representation), the best scientific and commercial information available indicates that this contribution is very limited in scope due to its small population size and isolation from other populations. Therefore, because we could not answer both screening questions in the affirmative, we conclude that the Pine Nut PMU portion of the range does not warrant further consideration as a significant portion of the range.

In addition to the Pine Nut PMU, we identified another portion of the DPS, the White Mountains PMU, where the information regarding projections of extirpation probability suggests the population may be experiencing a disproportionate response to threats. While the magnitude of most threats acting in this PMU (*e.g.,* threats associated with cheatgrass, infrastructure, recreation, grazing, predation, and drought) are generally lower than the remainder of the range, it also has a projected high probability of extirpation (75.1 percent; Coates et al. 2020, Table 1). These projections were calculated from limited data, as completing surveys was difficult given the area's remoteness and being at the highest elevation for the Bi-State DPS, and as a result, the authors note that some leks needed to be omitted from the analysis due to data quality issues, leks could have been missed, and the model may underrepresent abundance for that PMU (Coates et al. 2020, p. 36). (Coates et al. 2020, pp. 9, 36). However, though the model may underrepresent abundance (and thus over represent the probability of extirpation to some degree), out of an abundance of caution, we proceeded under the premise that this portion of the range meets the screening criteria of whether substantial information exists indicating the population occurring here may be threatened or endangered.

Subsequently, as with the Pine Nut PMU, we then proceeded to the significance screening question, asking whether there is substantial information indicating that this portion of the range (*i.e.,* the White Mountains PMU) *may* be significant. As in the Pine Nut PMU, sage-grouse in the White Mountains PMU exhibit similar habitat use and behaviors to sage-grouse in the remainder of the Bi-State DPS; thus, there is no unique observable environmental usage or behavioral characteristics attributable to just this area's population. In the White Mountains PMU, unique genetic characteristics have been documented in the PMU's birds, including haplotypes not present elsewhere in the DPS (Oyler-McCance et al. 2014, pp. 1304, 1308). However, although there is genetic differentiation between the White Mountains PMU and other PMUs, we found no information indicating that the White Mountains PMU's genetic characteristics represent a unique or significant adaptive capacity compared to the remainder of the DPS.

Additionally, the White Mountains PMU has relatively few birds compared to most other PMUs in the DPS. Though exact counts are not available due to the isolated nature of this PMU, recent surveys have found only two leks, with between zero and nine males documented per lek per year (NDOW 2018, unpublished data). Historical evidence suggests bird densities in this area have always been low (Bi-State Local Planning Group 2004, p. 108); Service 2020, pp. 31–32). Additionally, there has been no recent recorded movement of birds into occupied areas of other PMUs. Though a potential connectivity corridor exists between populations in the South Mono and White Mountains PMUs, the vegetation within this corridor has apparently changed due to woodland succession, and an aerial survey suggests that current vegetation is not suitable sage-grouse habitat (Bi-State Lek Surveillance Program 2012, p. 36; Service 2020, pp. 29–30).

Overall, we found no substantial information that would indicate the White Mountains PMU may be significant. While the White Mountains PMU provides some contribution to the DPS's overall ability to withstand catastrophic or stochastic events (redundancy and resiliency, respectively), and to adapt to changing environmental conditions (representation), the best scientific and commercial information available indicates that this contribution is very limited in scope due to its small population size and isolation from other populations. Therefore, because we could not answer both screening questions in the affirmative, we conclude that the White Mountains PMU portion of the range does not warrant further consideration as a significant portion of the range.

Because we did not identify any portions of the Bi-State DPS entity where: (1) It may be in danger of extinction or likely to become so in the foreseeable future; and (2) it may be significant, a more thorough significant portion of the range analysis is not required. Therefore, we conclude, based on this screening analysis, that no portions warrant further consideration through a more detailed analysis, and the Bi-State DPS is not in danger of extinction or likely to become so within the foreseeable future within a significant portion of its range. Our approach to analyzing significant portion of the species' range in this determination is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018); *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017); and *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020).

Determination of Status

Our review of the best scientific and commercial data available indicates that the Bi-State DPS of greater sage-grouse no longer meets the definition of a threatened species. Therefore, we are withdrawing our proposed rule to list the DPS as threatened. Consequently, we are also withdrawing the associated proposed 4(d) and critical habitat rules.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Reno Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the Reno Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–06384 Filed 3–30–20; 8:45 am]

BILLING CODE 4333–15–P

FEDERAL REGISTER

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Part IV

The President

Notice of March 30, 2020—Continuation of the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities

Federal Register

Vol. 85, No. 62

Tuesday, March 31, 2020

Presidential Documents

Title 3—

The President

Notice of March 30, 2020

Continuation of the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities

On April 1, 2015, by Executive Order 13694, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the increasing prevalence and severity of malicious cyber-enabled activities originating from, or directed by persons located, in whole or in substantial part, outside the United States. On December 28, 2016, the President issued Executive Order 13757 to take additional steps to address the national emergency declared in Executive Order 13694.

These significant malicious cyber-enabled activities continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared on April 1, 2015, must continue in effect beyond April 1, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13694.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
March 30, 2020.

[FR Doc. 2020–06892
Filed 3–30–20; 11:15 am]
Billing code 3295–F0–P

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