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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. FAA–2020–0495; Special Conditions No. 29–049–SC]

Special Conditions: Leonardo S.p.A. (Leonardo), Model AW169; Use of 30-Minute All Engines Operating (AEO) Power Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Leonardo Model AW169 helicopter. This model helicopter will have the novel or unusual design feature associated with a 30-minute all engines operating (AEO) power rating. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 22, 2020. The FAA must receive your comments by July 6, 2020.

ADDRESSES: Send comments identified by docket number FAA–2020–0495 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 of 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://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), as well as at *http://DocketsInfo.dot.gov.*

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 the 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: Rao Edupuganti, Regulations and Policy Section, AIR–681, Rotorcraft Standards Branch, Policy & Innovation Division, Aircraft Certification Service, 10101 Hillwood Parkway, Fort Worth, Texas 76177; telephone (817) 222–4389; facsimile (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Reason for No Prior Notice and Comment Before Adoption

The FAA has determined, in accordance with 5 U.S.C. 553(b)(3)(B) and 553(d)(3), that notice and opportunity for prior public comment hereon are unnecessary because substantially identical special conditions have been previously subject to the public comment process in several prior instances such that the FAA is satisfied that new comments are unlikely. For the same reason, the FAA finds that good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment.

Special conditions number	Company and helicopter model
No. 29–037–SC [1].	Airbus Helicopters Deutschland GmbH Model MBB–BK117 D–2.
No. 29–034–SC [2].	AgustaWestland Model AW189.
No. 29–011–SC [3].	Sikorsky Aircraft Corporation Model S–92A.
No. 29–004–SC [4].	Sikorsky Model S76C.

[1] 79 FR 78694, December, 31, 2014.
[2] 79 FR 54889, September 15, 2014.
[3] 67 FR 65871, October 29, 2002.
[4] 63 FR 32972, June 17, 1998.

Comments Invited

While the FAA did not precede these special conditions with a notice of proposed special conditions, 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 will consider comments filed late if it is possible to do so without incurring expense or delay. The FAA may change these special conditions based on the comments received.

Background

On August 20, 2019, Leonardo applied for FAA validation of its change to Type Certificate (TC) No. R00007RD for a 30-minute AEO power rating for the Model AW169 helicopter. The Model AW169 is a Transport Category, twin engine helicopter designed for civil operations. This model has a 10 seat capacity and is type certificated as a Category A rotorcraft under instrument flight rules for both single and dual pilot configurations. It is powered by two Pratt & Whitney Canada Model PW210A engines.

Leonardo proposes that the Model AW169 include the use of a novel and unusual design feature, which is a 30-minute AEO power rating. The 30-minute AEO power rating is generally intended to be used for hovering at increased power for search and rescue missions. 14 CFR 1.1 defines ''rated takeoff power'' as limited in use to no more than 5 minutes for takeoff operation. The use of takeoff power for

30 minutes will require special airworthiness standards, known as special conditions, to address the use of this 30-minute AEO rating and its effects on the rotorcraft. These special conditions will add requirements to the existing airworthiness standards in 14 CFR 29.1049 (Hovering cooling test procedures), § 29.1305 (Powerplant instruments), and § 29.1521 (Powerplant limitations).

Type Certification Basis

Under 14 CFR 21.101, Leonardo must show that the Model AW169 helicopter, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in TC No. R00007RD or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the TC are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in TC No. R00007RD are as follows:

14 CFR part 21.29.

14 CFR part 29 Amendment 29–1 through 29–52, dated March 30, 2010.

14 CFR part 36 appendix H, Amendment 36–1 through 36–28, dated March 11, 2013.

14 CFR part 29 Amendment 29–1 through 29–55 only for Hoist Installation.

Equivalent Level of Safety Findings issued against:

(a) 14 CFR 29.807(c) Emergency Exits Access (documented in ELOS Memo TC4266RD–R–C–01).

(b) 14 CFR 29.813(c) Passenger access to each emergency exit (documented in ELOS Memo TC4266RD–R–C–02).

(c) 14 CFR 29.811(c) Emergency exit marking (documented in ELOS Memo TC4266RD–R–C–03).

(d) 14 CFR 29 Subpart B, 29.1305, 29.1549 ''Engine Training Mode'' (documented in ELOS Memo TC4266RD–R–F–01).

(e) 14 CFR 29.1545(b)(4) Airspeed indicator green arcs (documented in ELOS Memo TC4266RD–R–F–02).

(f) 14 CFR 29.1305 and 29.1549 Power Index (documented in ELOS Memo TC4266RD–R–F–06).

In addition to the applicable airworthiness regulations and special conditions, the Leonardo Model AW169 helicopter 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.

Regulatory Basis for Special Conditions

The Administrator has determined that the applicable airworthiness regulations (that is, 14 CFR part 29) do not contain adequate or appropriate safety standards for the Leonardo Model AW169 helicopter because of a novel or unusual design feature. Therefore, special conditions are prescribed under the provisions of 14 CFR 21.16.

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

Special conditions are initially applicable to the model for which they are issued. Should the TC for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Leonardo Model AW169 helicopter will incorporate the following novel or unusual design feature:

- A 30-minute AEO power rating.

Discussion

The following is a summary of the final special conditions:

(a) In addition to the requirements of § 29.1049, the aircraft cooling effects due to the use of the 30-minute AEO power rating versus the Takeoff (5-minute) rating must be accounted for in the testing.

(b) In addition to the requirements of § 29.1305, since this new 30-minute AEO power rating has a time limit associated with its use, the pilot must have the means to identify:

(1) When the rated engine power level is achieved,

(2) When the event begins,

(3) When the time interval expires, and

(4) When the cumulative time in one flight is reached.

(c) In addition to the requirements of § 29.1521, this new 30-minute AEO power rating must be limited to not more than 30 minutes per use. This new rating will allow the use of power above maximum continuous power (MCP) for 30 minutes.

(d) Furthermore, the Model AW169 rotorcraft flight manual must include limitations on the use of the 30-minute AEO power rating, which states that continuous use above MCP takeoff power is limited to 30 minutes.

Applicability

These special conditions are applicable to the Leonardo Model AW169 helicopter. Should Leonardo apply at a later date for an amendment to the TC to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of helicopters. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 29

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Leonardo Model AW169 helicopter. Unless stated otherwise, all requirements in §§ 29.1049, 29.1305, and 29.1521 remain unchanged.

Section 29.1049, Hovering cooling test procedures. In addition to the requirements of this section, for rotorcraft with a 30-minute all engines operating (AEO) power rating, the hovering cooling provisions at the 30-minute AEO power rating must be shown—

(a) At maximum weight or at the greatest weight at which the rotorcraft can hover (if less), at sea level, with the power required to hover but not more than the 30-minute power, in the ground effect in still air, until at least 5 minutes after the occurrence of the highest temperature recorded, or until the continuous time limit of the 30-minute AEO power rating if the highest temperature recorded is not stabilized before.

(b) At maximum weight and at the altitude resulting in zero rate of climb for this configuration, until at least 5 minutes after the occurrence of the highest temperature recorded, or until the continuous time limit of the 30-minute AEO power rating if the highest temperature recorded is not stabilized before.

Section 29.1305 Powerplant instruments, at Amendment 29–40. In addition to the requirements of this section, for rotorcraft with a 30-minute AEO power rating, a means must be provided to alert the pilot when the engine is at the 30-minute power level, when the event begins, when the time interval expires, and when the cumulative time in one flight is reached.

Section 29.1521 Powerplant limitations, at Amendment 29–41. In addition to the requirements of this section, the use of the 30-minute AEO power must be limited to not more than 30 minutes per use. The use of the 30-minute power must also be limited by:

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable turbine inlet or turbine outlet gas temperature (for turbine engines);

(3) The maximum allowable power or torque for each engine, considering the power input limitations of the transmission with AEO;

(4) The maximum allowable power or torque for each engine considering the power input limitations of the transmission with one engine inoperative;

(5) The time limit for the use of the power corresponding to the limitations established in paragraphs (1) through (4) above; and

(6) The maximum allowable engine and transmission oil temperatures, if the time limit established in paragraph (5) above exceeds 2 minutes.

Issued in Fort Worth, Texas, on May 5, 2020.

Jorge Castillo,

Manager, Rotorcraft Standards Branch, AIR–680, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2020–10421 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 200407–0100]

RIN 0694–AI07

Addition of Entities to the Entity List, Revision of Certain Entries on the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding twenty-four entities, under twenty-five entries, to the Entity List. These twenty-four entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. The entities are located under the destination of the People's Republic of China (China), Hong Kong and the United Kingdom (U.K.). This rule also modifies three existing entries on the Entity List under the destination of China.

DATES: This rule is effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to part 744 of the Export Administration Regulations (EAR)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR (15 CFR parts 730–774) impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** notice adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Under § 744.11(b) (Criteria for revising the Entity List) of the EAR, entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such entities, may be added to the Entity List. Paragraphs (b)(1) through (b)(5) of § 744.11 provide an illustrative list of activities that could be considered contrary to the national security or foreign policy interests of the United States.

This rule implements the decision of the ERC to add twenty-four entities, under a total of twenty-five entries (one entity is identified in two destinations) to the Entity List. The twenty-four entities being added are located in China, Hong Kong and the U.K. The ERC made the decision to add each of the twenty-four entities described below under the standard set forth in § 744.11(b) of the EAR.

The ERC determined to add Beijing Cloudmind Technology Co., Ltd., Kunhai (Yanjiao) Innovation Research Institute, and Qihoo 360 Technology Company to the Entity List under the destination of China; to add Cloudminds (Hong Kong) Limited under the destination of Hong Kong; and to add Cloudminds Inc. and Qihoo 360 Technology Co. Ltd. under the destination of the U.K. These six entities are being added to the Entity List because the ERC determined there is reasonable cause to believe that these entities pose a significant risk of becoming involved in activities—the procurement of commodities and technologies for military end-use in China—that are contrary to the national security interests of the United States.

The ERC determined to add Beijing Computational Science Research Center, Beijing Jincheng Huanyu Electronics Co., Ltd., Center for High Pressure Science and Technology Advanced Research, Chengdu Fine Optical Engineering Research Center, China Jiuyuan Trading Corporation, Peac Institute of Multiscale Science, Sichuan Dingcheng Material Trade Co., Ltd., Sichuan Haitian New Technology Group Co. Ltd., Sichuan Zhonghe Import and Export Trade Co., Ltd., and Skyeye Laser Technology Limited to the Entity List under the destination of China on the basis of their procurement of U.S.-origin items for activities contrary to the national security or foreign policy interests of the United States. These ten entities are owned by, operated by, or directly affiliated with the Chinese Academy of Engineering Physics (CAEP), which is the technology complex responsible for the research, development and testing of China's nuclear weapons and has been on the Entity List under the destination of China since June 30, 1997 (62 FR 35334). (As discussed further below, the existing entry for CAEP is being modified by this rule to add an address and change the license review policy.)

The ERC determined to add Harbin Engineering University to the Entity List

under the destination of China, for acquiring and attempting to acquire U.S.-origin items in support of programs for the People's Liberation Army. This activity is contrary to national security and foreign policy interests under § 744.11(b)(3) and (5) of the EAR.

The ERC determined to add Harbin Institute of Technology, Harbin Chuangyue Technology Co., Ltd., and Harbin Yun Li Da Technology and Development Co., Ltd. to the Entity List under the destination of China, for acquiring and attempting to acquire U.S.-origin items in support of programs for the People's Liberation Army. Specifically, Harbin Institute of Technology has sought to use U.S. technology for Chinese missile programs. This activity is contrary to national security and foreign policy interests under § 744.11(b)(3) of the EAR.

The ERC determined to add to the Entity List Shanghai Nova Instruments Co., Ltd., and Zhu Jiejin under the destination of China, K Logistics (China) Limited under the destination of Hong Kong, and JCN (HK) Technology Co. Ltd. under the destinations of China and Hong Kong. The ERC determined that Shanghai Nova Instruments Co., Ltd., K Logistics (China) Limited, and Zhu Jiejin have been involved in the procurement of items subject to the EAR for possible use in missile and unmanned aerial vehicle applications in China without the licenses required pursuant to §§ 744.3 and 744.21 of the EAR. JCN (HK) Technology Co. Ltd. is co-located with Reekay Technologies, which was added to the Entity List on November 12, 2015 (80 FR 69856) for supplying U.S.-origin items for the Iranian defense industry.

Pursuant to § 744.11(b), the ERC determined that the conduct of the above-described twenty-four entities raises sufficient concerns that prior review of exports, reexports, or transfers (in-country) of all items subject to the EAR involving these entities, and the possible imposition of license conditions or license denials on shipments to the entities, will enhance BIS's ability to prevent violations of the EAR. For the twenty-four entities added to the Entity List in this final rule, BIS imposes a license requirement for all items subject to the EAR and a license review policy of a presumption of denial for all of these entities. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule. The acronym ''a.k.a.'' (also known as) is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters, and transferors in identifying entities on the Entity List.

For the reasons described above, this final rule adds the following twenty-four entities, under a total of twenty-five entities, to the Entity List:

China

- Beijing Cloudmind Technology Co., Ltd.;
- Beijing Computational Science Research Center;
- Beijing Jincheng Huanyu Electronics Co., Ltd.;
- Center for High Pressure Science and Technology Advanced Research;
- Chengdu Fine Optical Engineering Research Center;
- China Jiuyuan Trading Corporation;
- Harbin Chuangyue Technology Co. Ltd.;
- Harbin Engineering University;
- Harbin Institute of Technology;
- Harbin Yun Li Da Technology and Development Co., Ltd.;
- JCN (HK) Technology Co., Ltd.;
- Kunhai (Yanjiao) Innovation Research Institute;
- Peac Institute of Multiscale Science;
- Qihoo 360 Technology Company;
- Shanghai Nova Instruments Co., Ltd.;
- Sichuan Dingcheng Material Trade Co., Ltd.;
- Sichuan Haitian New Technology Group Co., Ltd.;
- Sichuan Zhonghe Import and Export Trade Co., Ltd.;
- Skyeye Laser Technology Limited; *and*
- Zhu Jiejin.

Hong Kong

- Cloudminds (Hong Kong) Limited;
- JCN (HK) Technology Co., Ltd.; *and*
- K Logistics (China) Limited.

United Kingdom

- Cloudminds Inc.; *and*
- Qihoo 360 Technology Co. Ltd.

Modifications to the Entity List

This final rule implements the decision of the ERC to modify three existing entries under the destination of China as follows:

This rule implements the decision of the ERC to modify the existing entry for China Electronics Technology Group Corporation 38th Research Institute (CETC 38), which was first added to the Entity List under the destination of China on August 1, 2018 (83 FR 37427). BIS is modifying the existing entry by removing one of the addresses ''418 Guilin Road, Shanghai, China'' included for this entry.

This rule implements the decision of the ERC to modify the existing entry for China Electronics Technology Group Corporation 55th Research Institute (CETC 55), which was first added to the Entity List under the destination of China on August 1, 2018 (83 FR 37427). BIS is modifying the existing entry by editing it to identify ''NEDITEK,'' currently listed as the fourth alias for the entry, as a third subordinate institution under this same entry. This rule also adds an additional address, ''2nd Floor, B4 Block, Jiulonghui Park, No. 19 Suyuan Avenue, Nanjing, China,'' for this entry.

This rule implements the decision of the ERC to modify the existing entry for the Chinese Academy of Engineering Physics, which was first added to the Entity List under the destination of China on June 30, 1997 (62 FR 35334). BIS is modifying the existing entry by adding three additional addresses, ''64 Mianshan Road, Mianyang, Sichuan, China; and 6 Huayuan Road, Haidian District, Beijing, China; and 1 Fenghao East Road, Haidian District, Beijing, China.'' In addition, BIS is modifying an existing address for Chinese Academy of Engineering Physics, to correct a zip code from ''6100003'' to ''610003.'' This rule also implements the decision of the ERC to modify the license review policy for this entry from case-by-case to presumption of denial. Lastly, this rule adds ''(See § 744.11 of the EAR).'' to clarify the license requirement for this entry.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on June 5, 2020, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR). Shipments of items exported, reexported or transferred (in-country under the authority of a BIS-issued license that were en route aboard a carrier to a port of export or reexport, on June 5, 2020, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the authorization of the issued license.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA

provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect on August 12, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)) or under the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 42.5 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. Under CHINA, PEOPLE'S REPUBLIC OF,

■ i. By adding in alphabetical order entries for ''Beijing Cloudmind Technology Co., Ltd.,'' ''Beijing Computational Science Research Center,'' ''Beijing Jincheng Huanyu Electronics Co., Ltd.,'' ''Center for High Pressure Science and Technology Advanced Research,'' ''Chengdu Fine Optical Engineering Research Center,'' ''China Jiuyuan Trading Corporation,'' ''Harbin Chuangyue Technology Co. Ltd.,'' ''Harbin Engineering University,'' ''Harbin Institute of Technology,'' ''Harbin Yun Li Da Technology and Development Co., Ltd.,'' ''JCN (HK) Technology Co., Ltd.,'' ''Kunhai (Yanjiao) Innovation Research Institute,'' ''Peac Institute of Multiscale Science,'' ''Qihoo 360 Technology Company,'' ''Shanghai Nova Instruments Co., Ltd.,'' ''Sichuan Dingcheng Material Trade Co., Ltd.,'' ''Sichuan Haitian New Technology Group Co., Ltd.,'' ''Sichuan Zhonghe Import and Export Trade Co., Ltd,'' ''Skyeye Laser Technology Limited,'' and ''Zhu Jiejin;''

■ ii. By revising the entries for ''China Electronics Technology Group Corporation 38th Research Institute (CETC 38),'' ''China Electronics Technology Group Corporation 55th Research Institute (CETC55)'' and ''Chinese Academy of Engineering Physics'';

■ b. Under HONG KONG, by adding in alphabetical order entries for ''Cloudminds (Hong Kong) Limited,'' ''JCN (HK) Technology Co., Ltd.,'' and ''K Logistics (China) Limited''; and

■ c. Under UNITED KINGDOM, by adding in alphabetical order entries for ''Cloudminds Inc.,'' and ''Qihoo 360 Technology Co. Ltd.''

■ The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*	*	*
CHINA, PEOPLE'S REPUBLIC OF.	*	*	*	*	*	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Beijing Cloudmind Technology Co., Ltd., a.k.a., the following two aliases: —Cloudminds Technologies Co., Ltd.; *and* —Daxie Technology. Room 601–602, 4A Block, Baiziwan, Chaoyang District, Beijing 100022 China; *and* Room 220, No. 5, Jiaodao Da St., Fangshan District, Beijing, China; *and* 33/F, Unit 8, Wanjing Soho, Chaoyang District, Beijing, China; *and* No. 10 Wangjing Street, Wangjing SOHO Tower 2, Block C, Room 1506, Chaoyang District, Beijing, 100096 China; *and* No. 88 Nongda South Road, Wanlin Building, 2/F, Haidian District, Beijing 100022 China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	Beijing Computational Science Research Center, a.k.a., the following three aliases: —BCSRC; —Beijing Computing Science Research Center; *and* —CSRC. Bldg. 9 East Zone, ZPark II No. 10 East Xibeiwang Road, Beijing, China; *and* Building 9, East District, Zhongguancun Software Park, No. 10, Northwest Wangdong Road, Haidian District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	Beijing Jincheng Huanyu Electronics Co., Ltd., Room 303, Building 7, No. 69, North Third Ring Road, Haidian District, Beijing, China; *and* No. 64 Mianshan Road, Mianyang City, Sichuan, China; *and* No. 11 Jindu Section Airport Road, Chengdu, China; *and* 302, 3rd Floor, Building 7, No 13 Building, Huayuan Road, Haidian District, Beijing, China; *and* Rm 7–302, No. Jia 13, Huayuan Road, Haidian, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	Center for High Pressure Science and Technology Advanced Research, a.k.a., the following two aliases: —HPSTAR; *and;* —Beijing High Voltage Science Research Center. No. 1690 Cailun Rd. Shanghai, China; *and* No. 10, Northeast Wangxi Road, Haidian District, Beijing, China; *and* 3rd Floor, Dongrong Building, No. 2699 Qianjin Street, High-Tech Development Zone, Changchun City, Jilin Province, China; *and* Bldg. 8 East Zone, ZPark II No. 10, East Xibeiwang Road, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	Chengdu Fine Optical Engineering Research Center, No 3 Keyuan, 1st Road, Chengdu Hi-Tech Zone, Chengdu, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*

Country	Entity	License requirement	License review policy	Federal Register citation
	China Electronics Technology Group Corporation 38th Research Institute (CETC 38), a.k.a., the following seven aliases, and seven subordinate institutions: —Hefei Institute of Electronic Engineering; —Southwest China Research Institute of Radar Technology; —East China Research Institute of Electronic Engineering; —ECRIEE; —No 38 Research Institute; —Research Institute 38; *and* —CETC Research Institute 38. *Subordinate institution* Anhui Sun-Create Electronics. *Subordinate institution* Anhui Bowei Chang An Electronics. *Subordinate institution* ECU Electronic Industrial. *Subordinate institution* Hefei ECU–TAMURA Electric. *Subordinate institution* Anhui Bowei Guangcheng Information Technology. *Subordinate institution* Anhui Bowei Ruida Electronics Technology. *Subordinate institution* Brainware Terahertz. The following addresses apply to the entity and to the seven subordinate institutions: 199 Xiangzhang Ave., Hefei, Anhui, China; *and* 19 He Huan Lu, Hefei, China; *and* 19 Hehuan Road, Hefei, China; *and* 260 Ji Xi Road, Hefei, China; *and* 88 Pihe Road, Hefei, China; *and* Forward Road, Economics Development Zone of Luan, Luan, Anhui, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	83 FR 37427, 8/1/18. 85 FR [INSERT FR PAGE NUMBER 6/5/20].
	China Electronics Technology Group Corporation 55th Research Institute (CETC55), a.k.a., the following three aliases, and three subordinate institutions: —Nanjing Electronic Devices Institute; —CETC Research Institute 55; *and* —NEDI. 524 Zhongzhan East Road, Nanjing, Jiangsu, China; *and* 524 East Zhongshan Road, Nanjing, Jiangsu, China; and 523 East Zhongshang Road, Nanjing, Jiangsu, China; *and* 166 Middle Zhenghang Road, Nanjing, China; and 166 Zhengfang Mid Road, Nanjing, China; and 166 Zhengfang Mid Road, Nanjing, China; *and* Huaxia Sci and Tech Park Hi-Tech Development, Nanjing, China; *and* RM 2105 Huaxia Bldg., No 81 Zhongshan Rd., Nanjing, China; *and* 8 Xingwen Road, Economic and Tech, Nanjing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	83 FR 37427, 8/1/18. 85 FR [INSERT FR PAGE NUMBER 6/5/20].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Subordinate institution Nanjing Guosheng Electronics, 8 Xingwen Road, Economic and Tech, Nanjing, China; *and* 166 Middle Zhenghang Road, Nanjing, China; *and* 166 Zhengfang Mid Road, Nanjing, China; *and* 166 Zhengfand Mid Road, Nanjing, China; *and* 168 Zhengfand Mid Road, Nanjing, China; *and* 165 Zhangfang Mid-Road, Nanjing, China; *and* 414 South Zhong Shan Road, Nanjing, Jiangsu, China; *and* *Subordinate institution* Nanjing Guobo Electronic, 166 Zhengfang Mid Road, Nanjing, China. *Subordinate institution* NEDITEK, a.k.a, the following three aliases: —NEDI Technology; —NTESY; *and* —Nanjing Nade Technology. 2nd Floor, B4 Block, Jiulonghui Park, No. 19 Suyuan Avenue, Nanjing, China; *and* 524 Zhongzhan East Road, Nanjing, Jiangsu, China; *and* 524 East Zhongshan Road, Nanjing, Jiangsu, China; *and* 523 East Zhongshang Road, Nanjing, Jiangsu, China; *and* 166 Middle Zhenghang Road, Nanjing, China; and 166 Zhengfang Mid Road, Nanjing, China; *and* 166 Zhengfang Mid Road, Nanjing, China; *and* Huaxia Sci and Tech Park Hi-Tech Development, Nanjing, China; *and* RM 2105 Huaxia Bldg., No 81 Zhongshan Rd., Nanjing, China; *and* 8 Xingwen Road, Economic and Tech, Nanjing, China.			
*	*	*	*	*
	China Jiuyuan Trading Corporation, a.k.a., the following three aliases: —China Long Term Material Trading Company; —China Long-Standing Material Trading Company; *and* —China Jiuyuan High-Tech Equipment Company. 64 Mianshan Road, Mianyang City, Sichuan, China; *and* No 169, West Section, Yihuan Road, Chengdu, China; *and* No. 11 Jindu Section Airport Road, Chengdu, China; *and* Rm. 302 Genfang International, No. A13, Huayuan Rd., Haidian, Beijing, China; *and* 8 Huayuan Road, Haidian District Beijing; *and* 6 Huayuan Road, Haidian District Beijing; *and* 1 Fenghao East Road, Haidian District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
*	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Chinese Academy of Engineering Physics, a.k.a., the following seventeen aliases: —Ninth Academy; —Southwest Computing Center; —Southwest Institute of Applied Electronics; —Southwest Institute of Chemical Materials; —Southwest Institute of Electronic Engineering; —Southwest Institute of Environmental Testing; —Southwest Institute of Explosives and Chemical Engineering; —Southwest Institute of Fluid Physics; —Southwest Institute of General Designing and Assembly; —Southwest Institute of Machining Technology; —Southwest Institute of Materials; —Southwest Institute of Nuclear Physics and Chemistry (a.k.a., China Academy of Engineering Physics (CAEP)'s 902 Institute); —Southwest Institute of Research and Applications of Special Materials Factory; —Southwest Institute of Structural Mechanics; (all of preceding located in or near Mianyang, Sichuan Province) —The High Power Laser Laboratory, Shanghai; —The Institute of Applied Physics and Computational Mathematics, Beijing. 901 Institute (P.O. Box 523 Chengdu, 610003) *and* 64 Mianshan Road, Mianyang, Sichuan, China; *and* 6 Huayuan Road, Haidian District, Beijing, China; *and;* 1 Fenghao East Road, Haidian District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	62 FR 35334, 6/30/97. 66 FR 24266, 5/14/01. 75 FR 78883, 12/17/10. 76 FR 21628, 4/18/11. 76 FR 50407, 8/15/11. 77 FR 58006, 9/19/12. 85 FR [INSERT FR PAGE NUMBER 6/5/20].
*	*	*	*	*
	Harbin Chuangyue Technology Co. Ltd., Room 10l, Building 221, No. 8 Campus Street, Nangang District, Harbin, Heilongjiang, China; *and* Room 0103, 40 Nursery Street, Nangang District. Harbin, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	Harbin Engineering University, No. 145 South Tongda Street, Harbin, Heilongjiang Province, China 150001.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	Harbin Institute of Technology, No. 92 Xidazhi Street, Nangang District, Harbin, Heilongjiang, China; *and* No. 92 West Dazhi Street, Nangang District, Harbin, Heilongjiang, China; *and* No. 2 West Wenhua Road, Weihai, Shandong, China; *and* Pingshan 1st Road, Shenzhen, Guangdong, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	Harbin Yun Li Da Technology and Development Co., Ltd., Building 7, No. 92 West Dazhi Street, Nangang District, Harbin, Heilongjiang, China; *and* Room 1, Building 2, No. 509 Pioneer Road, Nangang District, Harbin, Heilongjiang, China; *and* Room 1, Building 2, No. 509 Xianfeng Road, Nangang District, Harbin, Heilongjiang, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	JCN (HK) Technology Co., Ltd., Room 8D Block A, Guanghao International Center, Meilong Road, Longhua District, Shenzhen, Guangdong, China; *and* Unit 1516 Block B, Guanghao International Center, Meilong Road, Longhua District, Shenzhen, Guangdong, China. (See alternate address in Hong Kong).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	Kunhai (Yanjiao) Innovation Research Institute, a.k.a., the following two aliases: —Kunhai Academy for Innovative Research and Data Technologies Co.; *and* —Kunhai Innovation Engineering Research Institute. 17th Floor, Block A, Building 5, Zhongguancun National Defense Science and Technology Park, Haidian District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	Peac Institute of Multiscale Science, a.k.a., the following two aliases: —Peak Multiscale Science Institute; *and* —Peak Multi-Scale Scientific Research Institute. 111, 1st Section, Northern 2nd Ring Road, Chengdu, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	Qihoo 360 Technology Company, No. 6 Jiuxianqiao Rd., Building No. 2, 3/F, Chaoyang District, Beijing, China; *and* No. 188–218 Shuangbin Road, Qingpu District, Shanghai 200001, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	Shanghai Nova Instruments Co., Ltd., a.k.a., the following four aliases: —Shanghai Weiyi Electromechanical Equipment Co.; —Shanghai Weiyi Mechanical and Electrical Equipment Co., Ltd.; —Shanghai Weiyi Measurement and Control Technology Co., Ltd.; *and* —Nova Instruments. Rm. 408 Bldg. 3 No 911–11 Hulan Rd., Boashan District, Shanghai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	Sichuan Dingcheng Material Trade Co., Ltd., No. 64 Mianshan Road, Mianyang City, Sichuan, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	Sichuan Haitian New Technology Group Co., Ltd., a.k.a., the following two aliases: —Haitian Group; *and* — Sichuan Haitian Hi-Tech Group. 64 Mianshan Road, Mianyang City, Sichuan, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	Sichuan Zhonghe Import and Export Trade Co., Ltd., Building 26, No. 169–185, West Third Section, First Ring Road, Jinniu District, Chengdu, China; *and* No 169, West Section, Yihuan Road, Chengdu, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
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Country	Entity	License requirement	License review policy	Federal Register citation
	Skyeye Laser Technology Limited, a.k.a., the following one alias: —Mianyang Tianyan Laser Technology, 237 Chuangye Road Zhongduan, Mianyang, Sichuan, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	Zhu Jiejin, a.k.a., the following one alias: —Anna Zhu. Rm 408 Bldg. 3 No 911–11 Hulan Rd., Boashan District, Shanghai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
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*	* *	*	* *	*
HONG KONG ...	* *	*	* *	*
	Cloudminds (Hong Kong) Limited, 10/F Massmutual Twr 33, Lockhart Rd, Wan Chai, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	JCN (HK) Technology Co., Ltd., Rm. 502, Arion Centre, 2–12 Queen's Rd. West, Hong Kong. (See alternate addresses in China).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
	K Logistics (China) Limited, a.k.a., the following one alias: —K Logistics Hong Kong. Unit A, 4/F., China Fen Hin Building, No. 5 Cheung Yue St., Kowloon, Hong Kong.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	* *	*	* *	*
*	* *	*	* *	*
UNITED KINGDOM.	* *	*	* *	*
	Cloudminds Inc., C/O Maples Corporate Services Limited Ugland House, South Church Street, George Town, Grand Cayman KY1–1104, Cayman Islands.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
	Qihoo 360 Technology Co. Ltd., P.O. Box 309 George Town; *and* C/O Maples Corporate Services Limited Ugland House, South Church Street, George Town, Grand Cayman KY1–1104, Cayman Islands.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	85 FR [INSERT FR PAGE NUMBER 6/5/20].
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*	* *	*	* *	*

Dated: May 15, 2020.

Wilbur Ross,

Secretary, U.S. Department of Commerce.

[FR Doc. 2020–10869 Filed 6–3–20; 11:15 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 200407–0099]

RIN 0694–AI02

Addition of Certain Entities to the Entity List; Revision of Existing Entries on the Entity List

AGENCY: Bureau of Industry and Security, Commerce

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) by adding nine entities to the Entity List. These nine entities have been determined by the U.S. Government to be acting contrary to the foreign policy interests of the United States and will be listed on the Entity List under the destination of the People's Republic of China (China). This rule also modifies two entries and revises one entry on the Entity List under the destination of China.

DATES: This rule is effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (15 CFR, Subchapter C, part 744, Supplement No. 4) identifies entities reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The Export Administration Regulations (EAR) (15 CFR parts 730–774) impose additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in country) to listed entities. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** notice adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add nine entities to the Entity List. The nine entities are added based on § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The nine entities are located in China.

The ERC reviewed and applied § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these nine entities to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, that they have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, along with those acting on behalf of such persons, may be added to the Entity List. Paragraphs (b)(1) through (b)(5) of § 744.11 provide an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. For each of the nine entities described below, the ERC made the requisite determination under the standard set forth in § 744.11(b).

Pursuant to § 744.11(b) of the EAR, the ERC determined that the Ministry of Public Security's Institute of Forensic Science of China and Aksu Huafu Textiles Co. are engaging in activities contrary to the foreign policy interests of the United States, and seven additional entities, CloudWalk Technology; FiberHome Technologies Group and its subsidiary Nanjing FiberHome Starrysky Communication Development Co.; NetPosa and its subsidiary SenseNets; Intellifusion; and IS'Vision are enabling activities contrary to the foreign policy interests of the United States. Specifically, these entities have been implicated in human rights violations and abuses in the implementation of China's campaign of repression, mass arbitrary detention, forced labor and high-technology surveillance against Uighurs, Kazakhs, and other members of Muslim minority groups in the Xinjiang Uighur Autonomous Region (XUAR).

Pursuant to § 744.11(b) of the EAR, the ERC has determined that the conduct of these nine entities raises sufficient concern that prior review of exports, reexports or transfers (in-country) of all items subject to the EAR involving these entities, and the possible imposition of license conditions or license denials on shipments to the entities, will enhance BIS's ability to prevent items subject to the EAR from being used in activities contrary to the foreign policy of the United States.

For the nine entities described above that are being added to the Entity List, BIS imposes a license requirement for all items subject to the EAR and a license review policy of case-by-case review for Export Control Classification Numbers (ECCNs) 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983. A policy of case-by-case review also applies to items designated as EAR99 that are described in the Note to ECCN 1A995, specifically, items for protection against chemical or biological agents that are consumer goods, packaged for retail sale or personal use, or medical products. BIS has adopted a license review policy of presumption of denial for all other items subject to the EAR. For all nine entities, the license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in country) to any of the entities or in which such entities act as purchaser, intermediate consignee, ultimate consignee, or end user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the entities being added to the Entity List in this rule. The acronym ''a.k.a.,'' which is an abbreviation of 'also known as' is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters and transferors in identifying entities on the Entity List.

This final rule adds the following nine entities to the Entity List and includes, where appropriate, aliases:

People's Republic of China

- Aksu Huafu Textiles Co., including two aliases (Akesu Huafu *and* Aksu Huafu Dyed Melange Yarn);
- CloudWalk Technology, including four aliases (Chongqing Cloudwalk Technology Co., Ltd.; Guangzhou Yunshang Information Technology Co., Ltd.; Yun Cong Information Technology Co. Ltd.; *and* Yun Cong Technology);
- FiberHome Technologies Group, including eight aliases (FiberHome; FiberHome International Technology Co., Ltd., FiberHome Networks; FiberHome Networks Co. Ltd.; FiberHome Telecommunication Technologies Co., Ltd.; Haohuo Xiangyun Network Technology Co., Ltd.; Wuhan Fiberhome International; *and* Wuhan Institute of Posts and Telecommunications);
- Intellifusion, including two aliases (Shenzhen Yuntian Lifei Technology Co., Ltd. *and* Yuntian Lifei);
- IS'Vision, including six aliases (Chengdu Yinchen Netcom Technology Co., Ltd; Isvision Tech; Isvision Technologies Co., Ltd.; Shanghai Is'vision Co.; Shanghai Isvision Technologies Co., Ltd.; *and* Yinchen Technology);
- Ministry of Public Security's Institute of Forensic Science of China, including two aliases (Forensic Identification Center of the Ministry of Public Security of the People's Republic of China *and* Material Identification Center of the Ministry of Public Security of the People's Republic of China);
- Nanjing FiberHome Starrysky Communication Development Co., including two aliases (Fiberhome StarrySky Co., Ltd. *and* Nanjing

Fenghuo Xingkong Communication Development);

- NetPosa, including three aliases (Dongfang Netpower Technology Co.; Dongfang Wangli Technology; *and* NetPosa Technologies Ltd.);
- SenseNets, including six aliases (Deep Net Vision; Deep Network Vision; Sensenets Corporation; Shenzhen Net Vision; Shenzhen Shenwang Vision Technology Co., Ltd.; *and* Shenzhen Vision).

Revisions to the Entity List

This final rule implements revisions to three existing entries on the Entity List; the three entities were added to the Entity List under the destination of China on October 9, 2019 (84 FR 54004). BIS is modifying the existing entry for Hikvision by adding an additional name ''Hangzhou Hikvision Digital Technology Co., Ltd'' and identifying ''Hikvision'' as an alias. BIS is modifying the existing entry for Sensetime by adding an additional name ''Beijing Sensetime Technology Development Co., Ltd'', an additional alias ''Beijing Shangtang Technology Development Co., Ltd.'' and identifying ''SenseTime'' as an alias in the revised entry. BIS is revising the existing entry for Kezilesu Kyrgyz Autonomous Prefecture Public Security Bureau to correct the spelling of the first word of the existing alias so it correctly reads as ''Kizilsu Autonomous Prefecture Public Security Bureau.''

Savings Clause

Shipments of items removed from eligibility for a License Exception or for export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on June 5, 2020, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect on August 12, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)) or under the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications, and carries a burden estimate of 42.5.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to § 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is amended to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 12, 2019, 84 FR 61817 (November 13, 2019).

■ 2. Supplement No. 4 to part 744 is amended under CHINA, PEOPLE'S REPUBLIC OF,

■ a. By adding in alphabetical order entries for ''Aksu Huafu Textiles Co.'', ''Beijing Sensetime Technology Development Co., Ltd.'', ''CloudWalk Technology'', ''FiberHome Technologies Group'' and ''Hangzhou Hikvision Digital Technology Co., Ltd.'';

■ b. By removing ''Hikvision'';

■ c. By adding in alphabetical order entries for ''Intellifusion'' and ''IS'Vision'';

■ d. By revising ''Kezilesu Kyrgyz Autonomous Prefecture Public Security Bureau''; *and*

■ e. By adding in alphabetical order entries for ''Ministry of Public Security's Institute of Forensic Science of China'', ''Nanjing FiberHome Starrysky Communication Development Co.'' and ''NetPosa'';

■ f. By removing ''Sense Time''; and

■ g. By adding in alphabetical order ''SenseNets''.

The additions and revision read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
CHINA, PEOPLE'S REPUBLIC OF.	* *	*	* *	*
	Aksu Huafu Textiles Co., a.k.a., the following two aliases: —Akesu Huafu; *and* —Aksu Huafu Dyed Melange Yarn. 992 Kilometers Place Wuka Road, Akesu, China; *and* Building B 538 Fengting Avenue, Suzhou Jiangsu Province, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 6/5/20.
	* *	*	* *	*
	Beijing Sensetime Technology Development Co., Ltd., a.k.a., the following two aliases: —Beijing Shangtang Technology Development Co., Ltd.; *and* —Sense Time. 5F Block B, Science and Technology Building, Tsing-hua Science Park, Haidian District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and forEAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE] 6/5/20 84 FR 54004, 10/9/19.
	* *	*	* *	*
	CloudWalk Technology, a.k.a., the following four aliases: —Chongqing Cloudwalk Technology Co., Ltd.; —Guangzhou Yunshang Information Technology Co., Ltd.; —Yun Cong Information Technology Co. Ltd.; *and* —Yun Cong Technology. 1306 Room, No. 26, Jinlong Road, Nansha District, Guangzhou, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 6/5/20.
	* *	*	* *	*
	FiberHome Technologies Group, a.k.a., the following eight aliases: —FiberHome; —FiberHome International Technology Co., Ltd.; —FiberHome Networks; —FiberHome Networks Co. Ltd.; —FiberHome Telecommunication Technologies Co., Ltd.; —Haohuo Xiangyun Network Technology Co., Ltd; —Wuhan Fiberhome International; *and* —Wuhan Institute of Posts and Telecommunications. No. 6, Gaoxinsilu, East Lake High-Tech Development Zone, Wuhan, Hubei Province, 430205, China; *and* 88 Youkeyuan Road, Hongshan District, Wuhan China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 6/5/20.
	* *	*	* *	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Hangzhou Hikvision Digital Technology Co., Ltd., a.k.a., the following one alias: —Hikvision. No. 555 Qianmo Road, Binjiang District, Hangzhou 310052, China; *and* 23rd Floor, Block A, Yingke Plaza, No. 217 Gaoxin Street, Gaoxin District, Urumqi, China; *and* 700 Dongliu Road, Binjiang District, Hanzhou, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and forEAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 6/5/20 84 FR 54004, 10/9/19.
	* *	*	* *	*
	Intellifusion, a.k.a., the following two aliases: —Shenzhen Yuntian Lifei Technology Co., Ltd. —Yuntian Lifei. 1st Floor, Building 17, Shenzhen Dayun Software Town, 8288 Longgang Avenue, Yuanshan District, Longgang District, Shenzhen, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 6/5/20.
	* *	*	* *	*
	IS'Vision, a.k.a., the following six aliases: —Chengdu Yinchen Netcom Technology Co., Ltd; —Isvision Tech; —Isvision Technologies Co., Ltd.; —Shanghai Is'vision Co.; —Shanghai Isvision Technologies Co., Ltd.; *and* —Yinchen Technology. Building 3, No. 498, Guoshoujing Road, Pudong, Shanghai, China; *and* 4F, No. 9 Building of Pudong Software Park, 498 GuoShoujing Road, Shanghai, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 6/5/20.
	* *	*	* *	*
	Kezilesu Kyrgyz Autonomous Prefecture Public Security Bureau, a.k.a., the following one alias: —Kizilsu Autonomous Prefecture Public Security Bureau. Guangming Rd., Atushi City, XUAR 845350, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	84 FR 54004, 10/9/19. 85 FR [INSERT FR PAGE NUMBER] 6/5/20.
	* *	*	* *	*
	Ministry of Public Security's Institute of Forensic Science of China, a.k.a., the following two aliases: —Forensic Identification Center of the Ministry of Public Security of the People's Republic of China; *and* —Material Identification Center of the Ministry of Public Security of the People's Republic of China. No. 18 West Dongbeiwang Road, Haidian District, China; *and* Ministry of Public Security, Xicheng District, Beijing, China; *and* No. 17 Mulidi South Lane, Xicheng District, Beijing, China; *and* No. 5 Qianhai West Street, Tumushuk City, Xinjiang Uighur Autonomous Region (Tumushuk City Public Security Bureau).	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 6/5/20.
	* *	*	* *	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Nanjing FiberHome Starrysky Communication Development Co., a.k.a., the following two aliases: —Nanjing Fenghuo Xingkong Communication Development Co.; and —Fiberhome StarrySky Co., Ltd. 88 Yunlongshan Road, Jianye District, Nanjing China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 6/5/20.
	* *	*	* *	*
	NetPosa, a.k.a., the following three aliases: —Dongfang Netpower Technology Co.; —Dongfang Wangli Technology; *and* —NetPosa Technologies Ltd. Room 408, 4th Floor, Shining Xueyuan Road, Haidian District, Beijing, China; *and* Room 3603, Wanda Plaza, No. 555 Xuanwuhu Road, Economic and Technological Development Zone, Urumqi, China; *and* 26F, BLK C, Wangjing SOHO Tower 2, #1 Futong Ave, Chaoyang District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 6/5/20.
	* *	*	* *	*
	SenseNets, a.k.a., the following six aliases: —Deep Net Vision; —Deep Network Vision; —Sensenets Corporation; —Shenzhen Net Vision; —Shenzhen Shenwang Vision Technology Co., Ltd.; *and* —Shenzhen Vision. 8th Floor, East Tower, Skyworth Semiconductor Design Building, No. 18 Gaoxin South 4th Road, Yuehai Street, Nanshan District, Shenzhen, China; *and* 16F, China Merchants Development Center, No. 1063, Nanhai Avenue, Nanshan District, Shenzhen, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; presumption of denial for all other items subject to the EAR.	85 FR [INSERT FR PAGE NUMBER] 6/5/20.
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*	* *	*	* *	*

Dated: May 15, 2020.

Wilbur Ross,

Secretary, U.S. Department of Commerce.

[FR Doc. 2020–10868 Filed 6–3–20; 11:15 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 112

[Docket No. FDA–2020–D–1386]

Temporary Policy During the COVID–19 Public Health Emergency Regarding the Qualified Exemption From the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the availability of a final guidance for industry entitled ''Temporary Policy During the COVID–19 Public Health Emergency Regarding the Qualified Exemption from the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.'' Given the public health emergency presented by COVID–19, this guidance document is being implemented without prior public comment because FDA has determined that prior public participation is not feasible or appropriate, but it remains subject to comment in accordance with the Agency's good guidance practices. The guidance communicates the Agency's intention to exercise

enforcement discretion, in the manner described in the guidance, regarding sales to qualified end-users when determining eligibility for the qualified exemption from the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption, due to disruptions to supply chains, for the duration of the COVID–19 public health emergency.

DATES: The announcement of the guidance is published in the **Federal Register** on June 5, 2020.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1386 for ''Temporary Policy During the COVID–19 Public Health Emergency Regarding the Qualified Exemption from the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Compliance, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr. (HFS–607), College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Samir Assar, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr. (HFS–607), College Park, MD 20740, 240–402–1636.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Temporary Policy During the COVID–19 Public Health Emergency Regarding the Qualified Exemption from the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.'' This policy relates to the supply chain disruptions caused by the public health emergency related to COVID–19, as declared by the Department of Health and Human Services.

Given this public health emergency, this guidance is being implemented without prior public comment because FDA has determined that prior public participation for this guidance is not feasible or appropriate. This guidance document is being implemented immediately, but it remains subject to comment in accordance with the Agency's good guidance practices.

This guidance document concerns flexibility for the eligibility criteria for the qualified exemption from the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption (part 112 (21 CFR part 112)) due to disruptions to supply chains due to COVID–19. A farm is eligible for a qualified exemption and associated modified requirements in a calendar year if during the previous 3-year period preceding the applicable calendar year, the average annual monetary value of food the farm sold directly to qualified end-users exceeded the average annual monetary value of the food the farm sold to all other buyers during that period, and the average annual monetary value of all food the farm sold during the 3-year period was less than $500,000, adjusted for inflation. In order to provide flexibility to affected farms during the COVID–19 public health emergency, under the circumstances described in the guidance FDA does not intend to enforce the criteria regarding the portion of sales that are made to qualified end-users in 2020 (and any subsequent years that are affected by the COVID–19 public health emergency). Specifically,

for farms that either met the criteria for the qualified exemption in 2020 based on sales that were made in 2017 to 2019, or that did not have 3 years of sales prior to 2020, but that met the relevant requirements during the years they were in operation prior to 2020, FDA does not intend to enforce the criteria regarding the portion of sales that are made to qualified end-users in years that are affected by the COVID–19 public health emergency. This guidance does not affect the status of farms who continue to sell a majority of their food to qualified end-users despite COVID–19 supply chain disruptions.

This guidance is being issued consistent with FDA's good guidance practices regulation § 10.115(g)(2). The guidance represents the current thinking of FDA on ''Temporary Policy During the COVID–19 Public Health Emergency Regarding the Qualified Exemption from the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 112 have been approved under OMB control number 0910–0816.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/FoodGuidances*, *https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/coronavirus-disease-2019-covid-19*, or *https://www.regulations.gov*. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: May 29, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–12109 Filed 6–4–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 569

Syria-Related Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is adding regulations to implement Executive Order 13894 of October 14, 2019 (''Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria''). OFAC intends to supplement these regulations with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy.

DATES: This rule is effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website (*www.treasury.gov/ofac*).

Background

On October 14, 2019, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), issued Executive Order 13894 (84 FR 55851, October 17, 2019) (E.O. 13894).

In E.O. 13894, the President determined that the situation in and in relation to Syria, and in particular the recent actions by the Government of Turkey to conduct a military offensive into northeast Syria, undermines the campaign to defeat the Islamic State of Iraq and Syria, or ISIS, endangers civilians, and further threatens to undermine the peace, security, and stability in the region, and thereby constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States, and declared a national emergency to deal with that threat.

OFAC is issuing the Syria-related Sanctions Regulations, 31 CFR part 569 (the ''Regulations''), to implement E.O. 13894, pursuant to authorities delegated to the Secretary of the Treasury in E.O. 13894. A copy of E.O. 13894 appears in appendix A to this part.

The Regulations are being published in abbreviated form at this time for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part 569 with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy. The appendix to the Regulations will be removed when OFAC supplements this part with a more comprehensive set of regulations.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. 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 control number.

List of Subjects in 31 CFR Part 569

Administrative practice and procedure, Banks, Banking, Blocking of assets, Penalties, Reporting and recordkeeping requirements, Sanctions, Syria, Turkey.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control adds part 569 to 31 CFR chapter V to read as follows:

PART 569—SYRIA-RELATED SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.

569.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

569.201 Prohibited transactions.
569.202 Effect of transfers violating the provisions of this part.
569.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
569.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.
569.205 Exempt transactions.

Subpart C—General Definitions

569.300 Applicability of definitions.
569.301 Blocked account; blocked property.
569.302 Effective date.
569.303 Entity.
569.304 Financial, material, or technological support.
569.305 Information or informational materials.
569.306 Interest.
569.307 Licenses; general and specific.
569.308 OFAC.
569.309 Person.
569.310 Property; property interest.
569.311 Transfer.
569.312 United States.
569.313 United States person; U.S. person.
569.314 U.S. financial institution.

Subpart D—Interpretations

569.401 [Reserved]
569.402 Effect of amendment.
569.403 Termination and acquisition of an interest in blocked property.
569.404 Transactions ordinarily incident to a licensed transaction.
569.405 Setoffs prohibited.
569.406 Entities owned by one or more persons whose property and interests in property are blocked.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

569.501 General and specific licensing procedures.
569.502 [Reserved]
569.503 Exclusion from licenses.
569.504 Payments and transfers to blocked accounts in U.S. financial institutions.
569.505 Entries in certain accounts for normal service charges.
569.506 Provision of certain legal services.
569.507 Payments for legal services from funds originating outside the United States.
569.508 Emergency medical services.

Subpart F—Reports

569.601 Records and reports.

Subpart G—Penalties and Findings of Violation

569.701 Penalties and Findings of Violation.

Subpart H—Procedures

569.801 Procedures.
569.802 Delegation of certain authorities of the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

569.901 Paperwork Reduction Act notice.
Appendix A to Part 569—Executive Order 13894

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 28 U.S.C. 2461 note; 50 U.S.C. 1705 note; E.O. 13894, 84 FR 55851, October 17, 2019.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 569.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Note 1 to § 569.101: This part has been published in abbreviated form for the purpose of providing immediate guidance to the public. OFAC intends to supplement this part with a more comprehensive set of regulations, which may include additional interpretive and definitional guidance, general licenses, and statements of licensing policy.

Subpart B—Prohibitions

§ 569.201 Prohibited transactions.

All transactions prohibited pursuant to Executive Order 13894 of October 14, 2019 (E.O. 13894), or any further Executive orders issued pursuant to the national emergency declared in E.O. 13894, are prohibited pursuant to this part.

Note 1 to § 569.201: The names of persons designated pursuant to E.O. 13894, or listed in or designated or identified pursuant to any further Executive orders issued pursuant to the national emergency declared in E.O. 13984, whose property and interests in property therefore are blocked pursuant to this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) using the identifier formulation ''[SYRIA–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked]].'' The SDN List is accessible through the following page on OFAC's website: *www.treasury.gov/sdn*. Additional information pertaining to the SDN List can be found in appendix A to this chapter. *See* § 569.406 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to this section.

Note 2 to § 569.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in Section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to this section also are published in the **Federal Register** and incorporated into the SDN List using the identifier formulation ''[BPI–SYRIA–E.O.[E.O. number pursuant to which the person's property and interests in property are blocked pending investigation]].''

Note 3 to § 569.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as persons whose property and interests in property are blocked pursuant to this section.

Note 4 to § 569.201: The names of persons determined by the Secretary of State to meet the criteria for the imposition of sanctions pursuant to section 2 of E.O. 13894 will be incorporated into a data file containing OFAC's Consolidated Non-SDN data and will also be provided in a human readable format on the following page on OFAC's website: *www.treasury.gov/cons*. These listings will include specific information on the sanctions imposed on such persons pursuant to section 2 of E.O. 13894. However, for any persons determined to meet the criteria for the imposition of sanctions pursuant to section 2 of E.O. 13894, where the Secretary of State chooses to impose the sanctions described in section 2(c)(iv) of E.O. 13894, such persons' names will instead be incorporated into OFAC's SDN List using the identifier ''[SYRIA–EO13894].'' The names of persons determined to meet the criteria for the imposition of sanctions pursuant to section 2 of E.O. 13894 will be published in the **Federal Register** along with the applicable sanctions that have been imposed on such persons under that section.

Note 5 to § 569.201: The names of foreign financial institutions for which the opening or maintaining of a correspondent account or a payable-through account in the United States is prohibited or for which the maintenance of a correspondent account or payable-through account is subject to one or more strict conditions pursuant to section 3 of E.O. 13894, or pursuant to any further Executive orders issued pursuant to the national emergency declared in E.O. 13984, will be added to the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (CAPTA List) on OFAC's website

(*www.treasury.gov/ofac*), and published in the **Federal Register** along with the applicable prohibition or strict condition(s) that have been imposed on such foreign financial institutions under that section.

§ 569.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 569.201, is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or interest in property.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 569.201, unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

(e) The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(f) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property or interest in property blocked pursuant to § 569.201.

§ 569.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraph (e) or (f) of this section, or as otherwise directed or authorized by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 569.201 shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 569.201 may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraph (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 569.201 may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as real or personal property, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 569.201, nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 569.204 Expenses of maintaining blocked tangible property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of tangible property blocked pursuant to § 569.201 shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 569.201 may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 569.205 Exempt transactions.

(a) *Personal communications.* The prohibitions contained in this part do not apply to any postal, telegraphic,

telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Information or informational materials.* (1) The prohibitions contained in this part do not apply to the importation from any country and the exportation to any country of any information or informational materials, as defined in § 569.305, whether commercial or otherwise, regardless of format or medium of transmission.

(2) This section does not exempt from regulation transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of information or informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and payment of royalties with respect to income received for enhancements or alterations made by U.S. persons to such information or informational materials.

(3) This section does not exempt transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730 through 774, or to the exportation of goods (including software) or technology for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to a person whose property and interests in property are blocked pursuant to § 569.201 are prohibited.

(c) *Travel.* The prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation or exportation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

Subpart C—General Definitions

§ 569.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 569.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 569.201 held in the name of a person whose property and interests in property are blocked pursuant to § 569.201, or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to a license or other authorization from OFAC expressly authorizing such action.

Note 1 to § 569.301: *See* § 569.406 concerning the blocked status of property and interests in property of an entity that is directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by one or more persons whose property and interests in property are blocked pursuant to § 569.201.

§ 569.302 Effective date.

(a) The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, and, with respect to a person whose property and interests in property are blocked pursuant to § 569.201, the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked.

(b) For the purposes of this section, *constructive notice* is the date that a notice of the blocking of the relevant person's property and interests in property is published in the **Federal Register**.

§ 569.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 569.304 Financial, material, or technological support.

The term *financial, material, or technological support* means any property, tangible or intangible, including currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

§ 569.305 Information or informational materials.

(a)(1) The term *information or informational materials* includes publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

(2) To be considered information or informational materials, artworks must be classified under heading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials,* with respect to exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (EAA), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 569.306 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 569.307 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

(c) The term *specific license* means any license or authorization issued pursuant to this part but not set forth in subpart E of this part or made available on OFAC's website: *www.treasury.gov/ofac.*

Note 1 to § 569.307: *See* § 501.801 of this chapter on licensing procedures.

§ 569.308 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

§ 569.309 Person.

The term *person* means an individual or entity.

§ 569.310 Property; property interest.

The terms *property* and *property interest* include money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership, or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 569.311 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 569.312 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 569.313 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 569.314 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or other extensions of credit, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, trust companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

Subpart D—Interpretations

§ 569.401 [Reserved]

§ 569.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 569.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from a person whose property and interests in property are blocked pursuant to § 569.201, such property shall no longer be deemed to be property blocked pursuant to § 569.201, unless there exists in the property another interest that is blocked pursuant to § 569.201, the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to a person whose property and interests in property are blocked pursuant to § 569.201, such property shall be deemed to be property in which such person has an interest and therefore blocked.

§ 569.404 Transactions ordinarily incident to a licensed transaction.

Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(a) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with a person whose property and interests in property are blocked pursuant to § 569.201; or

(b) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

§ 569.405 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 569.201 if effected after the effective date.

§ 569.406 Entities owned by one or more persons whose property and interests in property are blocked.

Persons whose property and interests in property are blocked pursuant to § 569.201 have an interest in all property and interests in property of an entity in which such persons directly or indirectly own, whether individually or in the aggregate, a 50 percent or greater interest. The property and interests in

property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 569.201, regardless of whether the name of the entity is incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 569.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E, of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Syria-related sanctions page on OFAC's website: *www.treasury.gov/ofac.*

§ 569.502 [Reserved]

§ 569.503 Exclusion from licenses.

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 569.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which a person whose property and interests in property are blocked pursuant to § 569.201 has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note 1 to § 569.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 569.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 569.505 Entries in certain accounts for normal service charges.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

§ 569.506 Provision of certain legal services.

(a) The provision of the following legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 569.201 is authorized, provided that any receipt of payment of professional fees and reimbursement of incurred expenses must be authorized pursuant to § 569.507, which authorizes certain payments for legal services from funds originating outside the United States; via specific license; or otherwise pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any U.S. federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to or on behalf of persons whose property and interests in property are blocked pursuant to § 569.201, not otherwise authorized in this part, requires the issuance of a specific license.

(c) U.S. persons do not need to obtain specific authorization to provide related services, such as making filings and providing other administrative services, that are ordinarily incident to the provision of services authorized by this section. Additionally, U.S. persons who provide services authorized by this section do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. *See* § 569.404.

(d) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 569.201 is prohibited unless licensed pursuant to this part.

Note 1 to § 569.506: Pursuant to part 501, subpart E, of this chapter, U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of certain blocked funds for the payment of professional fees and reimbursement of incurred expenses for the provision of such legal services where alternative funding sources are not available.

§ 569.507 Payments for legal services from funds originating outside the United States.

(a) *Professional fees and incurred expenses.* (1) Receipt of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 569.506(a) to or on behalf of any person whose property and interests in property are blocked pursuant to § 569.201 is authorized from funds originating outside the United States, provided that the funds do not originate from:

(i) A source within the United States;

(ii) Any source, wherever located, within the possession or control of a U.S. person; or

(iii) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 569.506(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order or statute.

(2) Nothing in this paragraph (a) authorizes payments for legal services

using funds in which any other person whose property and interests in property are blocked pursuant to § 569.201, any other part of this chapter, or any Executive order or statute has an interest.

(b) *Reports.* (1) U.S. persons who receive payments pursuant to paragraph (a) of this section must submit annual reports no later than 30 days following the end of the calendar year during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) The reports, which must reference this section, are to be submitted to OFAC using one of the following methods:

(i) *Email (preferred method): OFAC.Regulations.Reports@treasury.gov;* or

(ii) *U.S. mail:* OFAC Regulations Reports, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

§ 569.508 Emergency medical services.

The provision and receipt of nonscheduled emergency medical services that are otherwise prohibited by this part are authorized.

Subpart F—Reports

§ 569.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties and Findings of Violation

§ 569.701 Penalties and Findings of Violation.

(a) The penalties available under section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), as adjusted annually pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note) or, in the case of criminal violations, as adjusted pursuant to 18 U.S.C. 3571, are applicable to violations of the provisions of this part.

(b) OFAC has the authority, pursuant to IEEPA, to issue Pre-Penalty Notices, Penalty Notices, and Findings of Violation; impose monetary penalties; engage in settlement discussions and enter into settlements; refer matters to the United States Department of Justice for administrative collection; and, in appropriate circumstances, refer matters to appropriate law enforcement agencies for criminal investigation and/or prosecution. For more information, see appendix A to part 501 of this chapter, which provides a general framework for the enforcement of all economic sanctions programs administered by OFAC, including enforcement-related definitions, types of responses to apparent violations, general factors affecting administrative actions, civil penalties for failure to comply with a requirement to furnish information or keep records, and other general civil penalties information.

Subpart H—Procedures

§ 569.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 569.802 Delegation of certain authorities of the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13894 of October 14, 2019 (E.O. 13894), and any further Executive orders issued pursuant to the national emergency declared in E.O. 13894, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 569.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures, and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Appendix A to Part 569—Executive Order 13894

Executive Order 13894 of October 14, 2019

Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, DONALD J. TRUMP, President of the United States of America, find that the situation in and in relation to Syria, and in particular the recent actions by the Government of Turkey to conduct a military offensive into northeast Syria, undermines the campaign to defeat the Islamic State of Iraq and Syria, or ISIS, endangers civilians, and further threatens to undermine the peace, security, and stability in the region, and thereby constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States. I hereby declare a national emergency to deal with that threat. I hereby determine and order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to be responsible for or complicit in, or to have directly or indirectly engaged in, or attempted to engage in, any of the following in or in relation to Syria:

(1) actions or policies that further threaten the peace, security, stability, or territorial integrity of Syria; or

(2) the commission of serious human rights abuse;

(B) to be a current or former official of the Government of Turkey;

(C) to be any subdivision, agency, or instrumentality of the Government of Turkey;

(D) to operate in such sectors of the Turkish economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State;

(E) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order; or

(F) to be owned or controlled by, or to have acted or purported to act for or on behalf of,

directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

Sec. 2. (a) The Secretary of State, in consultation with the Secretary of the Treasury and other officials of the U.S. Government as appropriate, is hereby authorized to impose on a foreign person any of the sanctions described in subsections (b) and (c) of this section, upon determining that the person, on or after the date of this order:

(i) is responsible for or complicit in, has directly or indirectly engaged in, or attempted to engage in, or financed, any of the following:

(A) the obstruction, disruption, or prevention of a ceasefire in northern Syria;

(B) the intimidation or prevention of displaced persons from voluntarily returning to their places of residence in Syria;

(C) the forcible repatriation of persons or refugees to Syria; or

(D) the obstruction, disruption, or prevention of efforts to promote a political solution to the conflict in Syria, including:

(1) the convening and conduct of a credible and inclusive Syrian-led constitutional process under the auspices of the United Nations (UN);

(2) the preparation for and conduct of UN-supervised elections, pursuant to the new constitution, that are free and fair and to the highest international standards of transparency and accountability; or

(3) the development of a new Syrian government that is representative and reflects the will of the Syrian people;

(ii) is an adult family member of a person designated under subsection (a)(i) of this section; or

(iii) is responsible for or complicit in, or has directly or indirectly engaged in, or attempted to engage in, the expropriation of property, including real property, for personal gain or political purposes in Syria.

(b) When the Secretary of State, in accordance with the terms of subsection (a) of this section, has determined that a person meets any of the criteria described in that subsection and has selected one or more of the sanctions set forth below to impose on that person, the heads of relevant departments and agencies, in consultation with the Secretary of State, as appropriate, shall ensure that the following actions are taken where necessary to implement the sanctions selected by the Secretary of State:

(i) agencies shall not procure, or enter into a contract for the procurement of, any goods or services from the sanctioned person; or

(ii) the Secretary of State shall direct the denial of a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien that the Secretary of State determines is a corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person.

(c) When the Secretary of State, in accordance with the terms of subsection (a) of this section, has determined that a person meets any of the criteria described in that subsection and has selected one or more of the sanctions set forth below to impose on that person, the Secretary of the Treasury, in consultation with the Secretary of State, shall take the following actions where necessary to implement the sanctions selected by the Secretary of State:

(i) prohibit any United States financial institution that is a U.S. person from making loans or providing credits to the sanctioned person totaling more than $10,000,000 in any 12-month period, unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities;

(ii) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;

(iii) prohibit any transfers of credit or payments between banking institutions or by, through, or to any banking institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;

(iv) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the sanctioned person, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;

(v) prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the sanctioned person;

(vi) restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person; or

(vii) impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of the sanctioned person the sanctions described in subsections (c)(i)–(c)(vi) of this section, as selected by the Secretary of State.

(d) The prohibitions in subsections (b) and (c) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

Sec. 3. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section upon determining that the foreign financial institution knowingly conducted or facilitated any significant financial transaction for or on behalf of any person whose property and interests in property are blocked pursuant to section 1 of this order.

(b) With respect to any foreign financial institution determined by the Secretary of the Treasury, in accordance with this section, to meet the criteria set forth in subsection (a) of this section, the Secretary of the Treasury may prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

Sec. 4. The unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in subsection 1(a) or 2(a) of this order, or aliens for which the sanctions under subsection 2(b)(ii) have been selected, would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended, except where the Secretary of State determines that the entry of the person into the United States would not be contrary to the interests of the United States, including when the Secretary so determines, based on a recommendation of the Attorney General, that the person's entry would further important United States law enforcement objectives. In exercising this responsibility, the Secretary of State shall consult the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security. Such persons shall be treated in the same manner as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions). The Secretary of State shall have the responsibility for implementing this section pursuant to such conditions and procedures as the Secretary has established or may establish pursuant to Proclamation 8693.

Sec. 5. I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 6. The prohibitions in sections 1 and 2 of this order include:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 7. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 8. For the purposes of this order:

(a) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) the term ''foreign financial institution'' means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. The term includes depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Secretary of the Treasury;

(c) the term ''knowingly,'' with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result;

(d) the term ''person'' means an individual or entity;

(e) the term ''United States person'' or ''U.S. person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(f) the term ''Government of Turkey'' means the Government of Turkey, any political subdivision, agency, or instrumentality thereof, or any person owned or controlled by or acting for or on behalf of the Government of Turkey.

Sec. 9. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 10. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All departments and agencies of the United States shall take all appropriate measures within their authority to implement this order.

Sec. 11. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)), and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 12. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP
THE WHITE HOUSE,
October 14, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Approved:

Justin G. Muzinich,

Deputy Secretary, Department of the Treasury.

[FR Doc. 2020–12200 Filed 6–4–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 104

[Docket ID: DOD–2019–OS–0132]

RIN 0790–AK93

Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services

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

ACTION: Final rule.

SUMMARY: This final rule removes the DoD part that contains its responsibilities under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The part duplicates DoD's internal policy assigning DoD responsibilities and providing internal procedures for informing Service members, former Service Members, and individuals who apply for uniformed service of their civilian employment and reemployment rights, benefits, and obligations. This internal policy does not require codification, therefore, DoD will remove this part and publish notification in the **Federal Register** informing the public of administrative information concerning a request for pertinent information regarding periods of uniformed service.

DATES: This rule is effective on June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Colette Ching, Lt Col, USAF, (571) 372–0671 or *colette.a.ching.mil@mail.mil.*

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publicly available on a Departmental website. A copy of the current issuance, DoD Instruction 1205.12, ''Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services,'' which was most recently updated on May 20, 2016, may be obtained at the following web address: *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/120512p.pdf?ver=2019-03-11-081728-330.* Additional information relating to USERRA is available at *https://www.esgr.mil/.*

Removal of this part does not reduce burden or costs to the public as it will not change DoD responsibilities and procedures for providing USERRA-related information. This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' does not apply. This removal supports a recommendation of the DoD Regulatory Reform Task Force.

List of Subjects in 32 CFR Part 104

Government employees, Military personnel.

PART 104—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 104 is removed.

Dated: May 19, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–11183 Filed 6–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2020–0237]

RIN 1625–AA00

Safety Zone; Schwab Family Fireworks, Lake Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 200-yard radius of a portion of Lake Huron, Harbor Beach, MI. This zone is necessary to protect spectators and vessels from potential hazards associated with the Schwab Family Fireworks.

DATES: This temporary final rule is effective from 10 p.m. to 11 p.m. on July 4, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2020–0237 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 temporary rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9564, or email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Detroit
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 doing so would be impracticable. The Coast Guard did not receive the final details of this fireworks display in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Detroit (COTP) has determined that potential hazard associated with fireworks from 10 p.m. until 11 p.m. on July 4, 2020 will be a safety concern to anyone within a 200-yard radius of the launch site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks are being displayed.

IV. Discussion of the Rule

This rule establishes a safety zone from 10 p.m. until 11 p.m. on July 4, 2020. The safety zone will encompass all U.S. navigable waters of Lake Huron, Harbor Beach, MI within a 200-yard radius of position 43°53.48′N, 082°40.76′W (NAD 83). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Lake Huron from 10 p.m. on July 4, 2020. Moreover, the Coast Guard will issue Broadcast Notice to Mariners (BNM) via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard 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 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

This rule will not call for a new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting one and a half hours on two nights that will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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.T09–0237 to read as follows:

§ 165.T09–0237 Safety Zone; Schwab Family Fireworks, Lake Huron, MI.

(a) *Location.* A safety zone is established to include all U.S. navigable waters of Lake Huron, Harbor Beach, MI within a 200-yard radius of position 43°53.48′ N, 082°40.76′ W (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) will be enforced from 10 p.m. until 11 p.m. on July 4, 2020.

(c) *Regulations.* (1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit (COTP), or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or his on-scene representative.

(3) The ''on-scene representative'' of COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the COTP or his on-scene representative to obtain permission to enter or operate within the safety zone. The COTP or his on-scene representative may be contacted via VHF Channel 16 or at (313) 568–9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

Dated: May 13, 2020.

Jeffrey W. Novak,

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

[FR Doc. 2020–11303 Filed 6–4–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0264]

RIN 1625–AA87

Security Zone; HMS MEDWAY, St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary moving security zone for navigable waters 500 yards around the HMS MEDWAY during the vessel's transit from the St. Johns River Sea Buoy until BAE Systems Shipyard, and while it remains docked at BAE Systems Shipyard, Mayport, FL starting May 17, 2020. The security zone is needed to protect personnel and government property from potential hazards associated with waterborne security incidents and recreational marine traffic while the vessel transits to their assigned berth space at BAE Systems Shipyard, Mayport, FL and while docked at BAE Systems Shipyard. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Jacksonville.

DATES: This rule is effective without actual notice from June 5, 2020 until 4 p.m. on June 14, 2020. For purposes of enforcement, actual notice will be used from 4 a.m. May 17, 2020 until June 5, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0264 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Emily Sysko, Sector Jacksonville, Waterways Management, U.S. Coast Guard; telephone 904–714–7662, email *Emily.T.Sysko@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was notified of the vessel arrival on May 8, 2020. The Royal Navy vessel and personnel will be entering the area and immediate action is needed to respond to the potential security hazards associated with their visit. It is impracticable to publish an NPRM because we must establish this security zone by May 17, 2020.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Jacksonville (COTP) has determined that potential hazards associated with waterborne threats as a result of the HMS MEDWAY entering the St. Johns River starting May 17, 2020, will be a potential security concern for the Royal Navy vessel as it passes the St. Johns River Sea Boy, while transits to their assigned berth at BAE Systems Shipyard, and while docked at the BAE Systems Shipyard in Mayport, FL. This rule is needed to protect personnel and government officials from potential hazards associated with vessels coming within 500 yards of the HMS MEDWAY.

IV. Discussion of the Rule

This rule establishes a temporary moving security zone from 4 a.m. May 17, 2020 until June 14, 2020. The security zone will encompass navigable waters within a 500 yard radius around the HMS MEDWAY as the vessel transits the St. Johns River to BAE Systems Shipyard, MAYPORT, FL and while docked at the BAE Systems Shipyard. The duration of the zone is intended to protect personnel and government property during the vessel's transit from the St. Johns River Sea Buoy to BAE Systems Shipyard, and while docked at BAE Systems Shipyard, Mayport, FL. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the time and duration the HMS MEDWAY's anticipated transit time in the St. Johns River. Vessel traffic will be able to safely transit around this security zone which would impact a small area of the St. Johns River while the HMS MEDWAY transits the waterway and is docked at their assigned berth at BAE Systems Shipyard, Mayport, FL. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit the security 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 security zone that will prohibit entry within navigable waters outlined in the Discussion of the Rule above. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For insturctions 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 record keeping 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.T07–0264 to read as follows:

§ 165.T07–0264 Security Zone; HMS MEDWAY, St. Johns River, Jacksonville, FL.

(a) *Location.* The following is a security zone: The security zone will encompass navigable waters within a 500 yard radius around HMS MEDWAY during the vessel's transit from the St. Johns River Entrance Buoy to it's assigned berth at BAE Systems Shipyard, Mayport, FL, and will remain around the vessel while docked at BAE Systems Shipyard.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and Federal, State, and local officers designated by or assisting the Captain of the Port Jacksonville (COTP) in the enforcement of the security zone.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Jacksonville by telephone at (904) 714–7557, or a designated representative via VHF–FM radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or a designated representative.

(3) The Coast Guard will provide notice of the regulated area through Broadcast Notice to Mariners via VHF–FM channel 16 or by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 4 a.m. May 17, 2020 until 4 p.m. on June 14, 2020.

Dated: May 15, 2020.

M.R. Vlaun,

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

[FR Doc. 2020–12245 Filed 6–4–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 71

RIN 2900–AQ96

Home Visits in Program of Comprehensive Assistance for Family Caregivers During COVID–19 National Emergency

AGENCY: Department of Veterans Affairs

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is revising its regulations that govern VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC) to relax the requirement for in-person home visits during the National Emergency related to Coronavirus Disease-2019 (COVID–19). This change is required to ensure the safety and well-being of veterans, caregivers, and VA clinical staff.

DATES:

Effective Date: This rule is effective on June 5, 2020.

Comment Date: Comments must be received on or before July 6, 2020.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AQ96, Home Visits in Program of Comprehensive Assistance for Family Caregivers During COVID–19 National Emergency.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In

addition, during the comment period, comments may be viewed online through the Federal Docket Management System at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Elyse Kaplan, National Deputy Director, Caregiver Support Program, Care Management and Social Work, 10P4C, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 461–7337. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Title I of Public Law 111–163, Caregivers and Veterans Omnibus Health Services Act of 2010 (hereinafter referred to as ''the Caregivers Act''), established section 1720G(a) of title 38 of the United States Code (U.S.C.), which required VA to establish a Program of Comprehensive Assistance for Family Caregivers (PCAFC) for eligible veterans who have a serious injury incurred or aggravated in the line of duty on or after September 11, 2001. The Caregivers Act also required VA to establish a Program of General Caregiver Support Services (PGCSS), pursuant to 38 U.S.C. 1720G(b), which is available to caregivers of covered veterans of all eras of military service. VA implemented PCAFC and PGCSS through its regulations in part 71 of title 38 of the Code of Federal Regulations (CFR). Through PCAFC, VA provides Family Caregivers of eligible veterans (as those terms are defined in 38 CFR 71.15) certain benefits, such as training, respite care, counseling, technical support, beneficiary travel (to attend required caregiver training and for an eligible veteran's medical appointments), a monthly stipend payment, and access to health care (if qualified) through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA). 38 U.S.C. 1720G(a)(3), 38 CFR 71.40. This interim final rule relates to PCAFC.

VA is adding a new § 71.60 to title 38, CFR, to provide flexibility in the mode by which VA conducts PCAFC home visits for the duration of the National Emergency related to COVID–19 declared by the President on March 13, 2020 (the COVID–19 National Emergency). COVID–19 is a new disease that causes respiratory illness in people and can spread from person to person. Many individuals and communities across the country have taken steps to reduce the spread of COVID–19, including isolating individuals diagnosed with the disease and implementing physical distancing measures. The priority goal in the VA response to COVID–19 is the protection of veterans, their caregivers, and VA staff. To reduce the risk of exposure to and transmission of COVID–19 to individuals involved in PCAFC, as well as members of their households and others with whom they come into contact who may be affected, VA is relaxing PCAFC home visit requirements as set forth in this interim final rule. This is especially important given the vulnerable population of veterans served by PCAFC. Pursuant to § 71.60, VA will have flexibility to conduct home visits through means other than in-person visits, including videoconference or other available telehealth modalities. Section 71.60 will only apply to home visits under part 71 and will not apply to other parts of title 38, CFR.

This interim final rule has an immediate impact on the mode by which VA completes the initial home-care assessments required by 38 CFR 71.25(e). Section 71.25(e) sets forth the requirement for an initial home-care assessment prior to approval and designation of a Family Caregiver under PCAFC. Section 71.25(e) currently requires ''a VA clinician or a clinical team [to] visit the eligible veteran's home to assess the caregiver's completion of training and competence to provide personal care services at the eligible veteran's home, and to measure the eligible veteran's well being.'' Pursuant to § 71.60, a VA clinician or clinical team is no longer required to conduct an in-person visit in the eligible veteran's home to satisfy this requirement for the duration the COVID–19 National Emergency.

Section 71.60 may also impact the home visit requirements proposed by VA on March 6, 2020 in RIN 2900–AQ48, Program of Comprehensive Assistance for Family Caregivers Improvements and Amendments Under the VA MISSION Act of 2018. 85 FR 13356. The proposed rule references a home visit in proposed § 71.25(e) with respect to the initial home-care assessment, specifies that reassessments under proposed § 71.30 may include a visit to the eligible veteran's home, and proposes to require an annual home visit in proposed § 71.40(b)(2) for purposes of wellness contacts. For the duration of the COVID–19 National Emergency, § 71.60 will authorize VA to complete these home visits through means other than an in-person visit to the eligible veteran's home, such as videoconference or other available telehealth modalities.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B), to publish this interim final rule without prior notice and the opportunity for public comment, and under 5 U.S.C. 553(d), to dispense with the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).

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.'' The Secretary finds that it is contrary to the public interest to delay issuance of this rule for the purpose of soliciting prior public comment because there is an immediate and pressing public health risk for veterans, caregivers, and clinical staff involved in PCAFC home visits, as well as members of their households and others with whom they come into contact who may be affected. Mandating an in-person visit to an eligible veteran's home through PCAFC could increase the risk of exposure to and transmission of COVID–19, and it is critical that VA have immediate flexibility to conduct home visits through other means. For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be impracticable and contrary to the public interest and is accordingly issuing this rule as an interim final rule. The Secretary will consider and address comments that are received within 30 days after the date that this interim final rule is published in the **Federal Register** and address them in a subsequent **Federal Register** document announcing a final rule incorporating any changes made in response to the public comments.

The APA also requires a 30-day delayed effective date, except for ''(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d). For the reasons stated above, the Secretary finds that there is also good cause for this interim rule to be effective immediately upon publication. It is in the public interest for VA to have flexibility to utilize alternative modalities to conduct required home visits during the COVID–19 National Emergency, and this will be facilitated by an immediate effective date. Additionally, this rule relieves a

restriction by expanding the modes by which the home visits can be completed. Instead of requiring such visits to be completed through in-person visits to the eligible veteran's home, for the duration of the COVID–19 National Emergency, PCAFC home visits can be completed through other means, including videoconference or other available telehealth modalities. By relieving a restriction and because any delay in implementation of § 71.60 would be contrary to the public interest under 5 U.S.C. 553(d)(1) and (3), respectively, this interim final rule is exempt from the APA's delayed effective date requirement.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This interim final rule provides flexibility in the modes by which VA conducts PCAFC home visits for the duration of the National Emergency related to COVID–19 and does not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

This interim final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this interim final rule can be found in the rule's economic analysis.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Congressional Review Act

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

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits.

List of Subjects in 38 CFR Part 71

Administrative practice and procedure, Caregivers program, Claims, Health care, Health facilities, Health professions, Mental health programs, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on June 3, 2020, for publication.

Consuela Benjamin,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 71 as follows:

PART 71—CAREGIVERS BENEFITS AND CERTAIN MEDICAL BENEFITS OFFERED TO FAMILY MEMBERS OF VETERANS

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

Authority: 38 U.S.C. 501, 1720G, unless otherwise noted.

■ 2. Add § 71.60 to read as follows:

§ 71.60 Home Visits During COVID–19 National Emergency.

Notwithstanding the requirements in this part, for the duration of the National Emergency related to COVID–19 declared by the President on March 13, 2020, VA may complete visits to the eligible veteran's home under this part through videoconference or other available telehealth modalities.

[FR Doc. 2020–12359 Filed 6–4–20; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2020–0029; FRL–10010–00–Region 1]

Air Plan Approval; New Hampshire; Negative Declaration for the Oil and Gas Industry; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of adverse comments, the Environmental Protection Agency (EPA) is withdrawing the April 6, 2020 direct final rule approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. New Hampshire's SIP revision provided a negative declaration for EPA's 2016 Control Technique Guideline for the oil and gas industry. This action is being taken in accordance with the Clean Air Act.

DATES: The direct final rule published at 85 FR 19087 on April 6, 2020 is withdrawn effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air and Radiation Division (Mail Code 05–2), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1046. *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In the direct final rule, EPA stated that if

adverse comments were submitted by May 6, 2020, the rule would be withdrawn and not take effect. EPA received adverse comments prior to the close of the comment period and, therefore, is withdrawing the direct final rule. EPA will address the comments in a subsequent final action based upon the proposed rule also published on April 6, 2020 (85 FR 19116). EPA will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 52

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

Dated: May 15, 2020.

Dennis Deziel,

Regional Administrator, EPA Region 1.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ Accordingly, the amendments to 40 CFR 52.1520 published on April 6, 2020 (85 FR 19087), are withdrawn effective June 5, 2020.

[FR Doc. 2020–10917 Filed 6–4–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 54

[GN Docket No. 20–32, WT Docket No. 10–208 (Closed); FCC 20–52; FRS 16722]

Establishing a 5G Fund for Rural America; Universal Service Reform—Mobility Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) summarizes the Commission's Order in GN Docket No. 20–32, adopted on April 23, 2020 and released on April 24, 2020 and its directive regarding methodologies for use of an adjustment factor and for disaggregation of legacy high-cost support for mobile carriers and to implement those methodologies to the extent such action is supported by the resulting record and the outcome of the 5G Fund proceeding. The Commission also announces the closing of WT Docket No. 10–208 and makes administrative amendments to the Commission's rules to clarify the Office of Economics and Analytics' functions and delegated authority.

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Kelly A. Quinn, Office of Economics and Analytics, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in GN Docket No. 20–32, adopted on April 23, 2020 and released on April 24, 2020 (*Order*). The full text of the *Order* is available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554, except when Commission Headquarters is otherwise closed to visitors. *See* Public Notice, *Restrictions on Visitors to FCC Facilities,* that appeared on the Commission website March 12, 2020, or by using the search function on the Commission's ECFS web page at *https://www.fcc.gov/ecfs/.* It is also available on the Commission's website at *https://www.fcc.gov/document/fcc-proposes-5g-fund-rural-america-0.* 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).

A. Directive Regarding an Adjustment Factor

1. In the 5G Fund notice of proposed rulemaking (*5G Fund NPRM*), 85 FR 31616, May 26, 2020, adopted concurrently with the *Order,* the Commission proposes to use an adjustment factor to promote better distribution of limited high-cost universal service funds in a 5G Fund auction, and to incorporate an adjustment factor into its proposed framework to disaggregate legacy high-cost support for competitive ETCs and transition to support under the 5G Fund. Consistent with their existing authority concerning the distribution of universal service support, the *Order* directs the Office of Economics and Analytics and the Wireline Competition Bureau to propose and seek comment on (1) adjustment factor values and the underlying methodologies that could be used to develop them; and (2) a process by which the adjustment factor could be applied to the disaggregation of legacy support consistent with the use of such a factor as proposed in the *5G Fund NPRM.*

2. The *Order* further directs the Office of Economics and Analytics and Wireline Competition Bureau to establish adjustment factor values and a process by which to apply an adjustment factor to the disaggregation of support that are supported by the record established in response to their proposals, provided such action is consistent with the actions that the Commission takes in the 5G Fund proceeding (GN Docket No. 20–32). Following any such action to establish an adjustment factor value and process by which to apply it to the disaggregation of legacy support, the *Order* also directs the Office of Economics and Analytics and Wireline Competition Bureau to resolve any disputes regarding attribution of legacy support and, once the disaggregation process is completed, to release a public notice detailing the disaggregated support.

B. Closing WT Docket No. 10–208

3. WT Docket No. 10–208 was opened in 2010 with the release of the *Universal Service Reform; Mobility Fund Notice of Proposed Rulemaking,* 75 FR 67060, Nov. 1, 2010, 75 FR 69374, Nov. 12, 2010, which sought comment on the creation of Mobility Fund Phase I to distribute one-time high-cost universal service support by reverse auction to mobile service providers to build current- and next-generation wireless networks. WT Docket No. 10–208 continued to be used for Mobility Fund Phase I matters and for proceedings addressing issues regarding the provision of ongoing support for 4G LTE through Mobility Fund Phase II. The Commission stated in the *Mobility Fund Phase II Report and Order,* 82 FR 15422, Mar. 28, 2017, that a goal of Mobility Fund Phase II was to ''target universal service funding to support the deployment of the highest level of mobile service available today.'' In light of the arrival of 5G technology, the Commission adopted the *5G Fund NPRM,* which proposes to provide funds to help close the digital divide and ensure all Americans have access to 5G networks and supersedes the Mobility Fund proceedings.

4. Because no further action is required or contemplated regarding WT Docket No. 10–208, the Commission closes it. Pending matters and statutory obligations regarding Mobility Fund Phase I and Mobility Fund Phase II are transferred to two dockets: GN Docket No. 19–367, and new GN Docket No. 20–104. Pending proceedings regarding Mobility Fund Phase II, including waivers and challenges, are hereby transferred to GN Docket No. 19–367, which is dedicated to the Mobility Fund Phase II Challenge Process. Section 54.1009(c) of the Commission's rules is revised to require Mobility Fund Phase

I annual reports to be filed in GN Docket No. 20–104. All pending Mobility Fund Phase I waivers are hereby transferred to GN Docket No. 20–104.

C. Clarifying Amendments Concerning Office of Economics and Analytics Functions and Delegated Authority

5. In January 2018, the Commission adopted an Order, 83 FR 63073, Dec. 7, 2018, that established the Office of Economics and Analytics and, among other things, generally shifted the functions of the Auctions and Spectrum Access Division in the Wireless Telecommunications Bureau to the Office of Economics and Analytics. The Commission amended its rules to establish the Office of Economics and Analytics' functions and delegated authority and make other conforming rule changes to reflect this new organizational structure. Pursuant to 5 U.S.C. 553(b)(A) with respect to ''rules of agency organization, procedure, or practice,'' the Commission makes certain clarifying amendments to §§ 0.21, 0.131, and 0.271 of its rules concerning the Office of Economics and Analytics' functions and delegated authority, to ensure that these rules reflect the intent of the Commission's Order establishing the Office of Economics and Analytics.

D. Procedural Matters

6. *Paperwork Reduction Act Analysis.* This Order does not contain any new or modified information collection requirements that are subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

7. *Congressional Review Act.* The Commission will not send a copy of the Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of agency organization, procedure, or practice that do not ''substantially affect the rights or obligations of non-agency parties.''

E. Ordering Clauses

8. *It is ordered* that, pursuant to the authority contained in sections 1, 4, 4(i), 5(b), 5(c), 201(b), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 154(i), 155(b), 155(c), 201(b), 214, 254, 303(r), and 403, this Order *is adopted,* and that parts 0 and 54 of the Commission's rules, 47 CFR parts 0 and 54, *are amended* as specified in the Final Rules herein, effective immediately upon publication in the **Federal Register**.

9. *It is further ordered* that, pursuant to the authority contained in sections 154(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j), the proceeding in WT Docket No. 10–208 *is terminated* and its docket *shall be closed;* all pending proceedings regarding Mobility Fund Phase II in WT Docket No. 10–208, including waivers and challenges, *are hereby transferred* to GN Docket No. 19–367; all Mobility Fund Phase I annual reports shall heretofore be filed in GN Docket No. 20–104; all pending Mobility Fund Phase I waivers in WT Docket No. 10–208 *are hereby transferred* to GN Docket No. 20–104.

List of Subjects

47 CFR Part 0

Classified information, Freedom of information, Government publications, Infants and children, Organization and functions (Government agencies), Postal service, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 54 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.21 is amended by:
■ a. Removing paragraph (m);
■ b. Redesignating paragraph (n) as paragraph (m) and revising newly redesignated paragraph (m);
■ c. Removing paragraph (o);
■ d. Redesignating paragraphs (p) through (u) as paragraphs (n) through (s);
■ e. In newly redesignated paragraph (q), adding ''of this chapter'' at the end of the sentence; and
■ f. Adding a new paragraph (t).

The revisions and addition read as follows:

§ 0.21 Functions of the Office.

* * * * *

(m) Serves as the Commission's principal policy and administrative staff resource with regard to auction design and implementation issues. Jointly with the Wireless Telecommunications Bureau, Media Bureau, Wireline Competition Bureau, and/or other relevant Bureaus and Offices, develops, recommends, and administers policies, programs and rules, and advises the Commission on policy, engineering, and technical matters, concerning auctions of spectrum for wireless telecommunications and broadcast services and uses of competitive bidding to achieve other Commission policy objectives, including universal service support. Administers procurement of auction-related services from outside contractors. Oversees auctions conducted on behalf of the Commission by third parties at the direction of the Commission. Provides policy, administrative, and technical assistance to other Bureaus and Offices on auction issues. Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in all matters pertaining to auction implementation. These activities include: Conducting auctions, policy development and coordination; conducting rulemaking and adjudicatory proceedings, including complaint proceedings for matters not within the responsibility of the Enforcement Bureau; acting on waivers of rules; compliance and enforcement activities for matters not within the responsibility of the Enforcement Bureau; determining resource impacts of existing, planned or recommended Commission activities concerning auctions, and developing and recommending resource deployment priorities. Exercises such authority as may be assigned, delegated, or referred to it by the Commission.

* * * * *

(t) Administers part 1, subparts V and W, of this chapter, including rulemaking.

■ 3. Section 0.131 is amended by revising paragraphs (a) and (c) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(a) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in all matters pertaining to the licensing and regulation of wireless

telecommunications, including ancillary operations related to the provision or use of such services; any matters concerning wireless carriers that also affect wireline carriers in cooperation with the Wireline Competition Bureau; and, in cooperation with the Office of Economics and Analytics, all policies, programs, and rules regarding spectrum auctions, and, in cooperation with the Wireline Competition Bureau and the Office of Economics and Analytics, USF mechanisms affecting wireless carriers. These activities include: Policy development and coordination; conducting rulemaking and adjudicatory proceedings, including licensing and complaint proceedings for matters not within the responsibility of the Enforcement Bureau; acting on waivers of rules; acting on applications for service and facility authorizations; compliance and enforcement activities for matters not within the responsibility of the Enforcement Bureau; determining resource impacts of existing, planned or recommended Commission activities concerning wireless telecommunications, and developing and recommending resource deployment priorities.

* * * * *

(c) Serves as a staff resource, in coordination with the Office of Economics and Analytics with regard to the development and implementation of spectrum policy through spectrum auctions. Jointly with the Office of Economics and Analytics, develops, recommends and administers policies, programs and rules concerning licensing of spectrum for wireless telecommunications through auctions and advises the Commission on policy, engineering, and technical matters relating to auctions of spectrum used for other purposes.

* * * * *

■ 4. Revise § 0.271 to read as follows:

§ 0.271 Authority delegated.

The Chief, Office of Economics and Analytics, is delegated authority to perform all functions and activities described in § 0.21 (and to perform the specified functions set forth in in paragraphs (f) through (i) of this section to the extent they fall within the subject matters over which the Office of Economics and Analytics has primary authority under § 0.21), subject to the exceptions and limitations in paragraphs (a) through (e) of this section:

(a) The Chief, Office of Economics and Analytics, shall not have authority to act on notices of proposed rulemaking and of inquiry, final orders in rulemaking proceedings and inquiry proceedings, and reports arising from any of the foregoing except such order involving ministerial conforming amendments to rule parts and notices and orders addressing the detailed procedures for implementation of auctions of spectrum and broadcast services and uses of competitive bidding to achieve other Commission policy objectives, including universal service support.

(b) The Chief, Office of Economics and Analytics, shall not have authority to act on any complaints, petitions, pleadings, requests, or other matters presenting new or novel questions of fact, law, or policy that cannot be resolved under existing precedents and guidelines.

(c) The Chief, Office of Economics and Analytics, shall not have authority to act on any applications for review of actions taken by the Chief, Office of Economics and Analytics pursuant to delegated authority, except that the Chief may dismiss any such application that does not comply with the filing requirements of § 1.115(d) and (f) of this chapter.

(d) The Chief, Office of Economics and Analytics, shall not have authority to act on any applications that are in hearing status.

(e) The Chief, Office of Economics and Analytics, shall not have authority to impose, reduce or cancel forfeitures pursuant to the Communications Act of 1934, as amended, in amounts of more than $80,000. Payments for bid withdrawal, default or to prevent unjust enrichment that are imposed pursuant to Section 309(j) of the Communications Act of 1934, as amended, and regulations in this chapter implementing Section 309(j) governing auction authority, are excluded from this restriction.

(f) The Chief, Office of Economics and Analytics, is delegated authority to deny requests for extension of time or to extend the time within which comments may be filed.

(g) The Chief, Office of Economics and Analytics, is authorized to dismiss or deny petitions for rulemaking that are repetitive or moot or that for other reasons plainly do not warrant consideration by the Commission.

(h) The Chief, Office of Economics and Analytics, is authorized to dismiss or deny petitions for reconsideration to the extent permitted by § 1.429(l) of this chapter and to the extent permitted by § 1.106 of this chapter.

(i) The Chief, Office of Economics and Analytics, is delegated authority to make nonsubstantive, editorial revisions to the Commission's rules and regulations contained in part 1, subparts Q, V, W, and AA, of this chapter.

■ 5. Section 0.331 is amended by revising paragraph (b) to read as follows:

§ 0.331 Authority delegated.

* * * * *

(b) *Authority concerning forfeitures and penalties.* The Chief, Wireless Telecommunications Bureau, shall not have authority to impose, reduce, or cancel forfeitures pursuant to the Communications Act of 1934, as amended, and imposed under regulations in this chapter in amounts of more than $80,000 for commercial radio providers and $20,000 for private radio providers.

* * * * *

PART 54—UNIVERSAL SERVICE

■ 6. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302 unless otherwise noted.

■ 7. Section 54.1009 is amended by revising paragraph (c) to read as follows:

§ 54.1009 Annual reports.

* * * * *

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing GN Docket No. 20–104; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

[FR Doc. 2020–09815 Filed 6–4–20; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201 and 218

[Docket DARS–2020–0017]

RIN 0750–AK99

Defense Federal Acquisition Regulation Supplement: Qualifications Requirements for Contracting Positions (DFARS Case 2020–D012)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement to implement a section of the National Defense Authorization Act for Fiscal

Year 2020 that removes the qualification requirement for contracting professionals to have completed 24 semester credit hours (or equivalent) of study in specifics areas.

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Kerryn Loan, telephone 571–372–6119.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 861 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 116–92). Section 861 amends section 808 of the NDAA for FY 2000 (Pub. L. 106–398) by removing the requirement for contracting professionals to have completed at least 24 semester credit hours (or equivalent) of study from an accredited institution of higher education in the areas of accounting, business, finance, law, contracts, purchasing, economics, industrial management, marketing, quantitative methods, and organization, and management. The qualification requirement, implemented at Defense Federal Acquisition Regulations Supplement (DFARS) 201.603–2(1)(iii)(B) and 218.201(1), is removed by this final rule in accordance with section 861. The title to DoD Instruction 5000.66 is also updated to read ''Defense Acquisition Workforce Education, Training, Experience, and Career Development Program'' at DFARS 201.603–2(2)(iii).

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only impacts the internal operating procedures of DoD. As such, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only impacts processes that are internal to DoD.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, 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. The Office of Management and Budget, Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This rule is not subject to an E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. 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 201 and 218

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201 and 218 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201 and 218 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATION SYSTEM

■ 2. Amend section 201.603–2 by revising paragraphs (1)(iii) and (2)(iii) to read as follows:

201.603–2 Selection.

(1) * * *

(iii) Have received a baccalaureate degree from an accredited educational institution; and

* * * * *

(2) * * *

(iii) Is an individual appointed to a 3-year developmental position. Information on developmental opportunities is contained in DoD Instruction 5000.66, Defense Acquisition Workforce Education, Training, Experience, and Career Development Program.

* * * * *

PART 218—EMERGENCY ACQUISITIONS

218.201 [Amended]

■ 3. Amend section 218.201 in paragraph (1) by removing ''and 24 semester credit hours of business related courses''.

[FR Doc. 2020–11751 Filed 6–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 206 and 219

[Docket DARS–2020–0016]

RIN 0750–AK93

Defense Federal Acquisition Regulation Supplement: Justification and Approval Threshold for 8(a) Contracts (DFARS Case 2020–D006)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2020.

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 823 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). Section 823 increases the threshold for requiring a justification and approval to award a sole source contract to a participant in the 8(a) program to actions exceeding $100 million. The current threshold is $22 million. Section 823 also designates the head of the procuring activity as the approval authority. To implmement section 823, the revised threshold is added in a new DFARS section 206.303–1, Requirements, and the new approval authority is added in DFARS 206.304, Approval of the justification. Corresponding revisions to indicate the new threshold are also included at DFARS 206.303–2, Content, and 219.808–1, Sole source.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create or revise any solicitation provisions or contract clauses. This rule amends DFARS 206.303 to increase the threshold for requiring a sole source justification and approval for contracts to 8(a) program participants exceeding $100 million. The rule also designates the appropriate approval authority.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it affects DoD internal operating procedures pertaining to sole source justifications for 8(a) procurements and the designated approval authority. The increased threshold and assignment of approval authority does not have a significant effect beyond the internal operating procedures of the agency issuing the policy. There is no additional cost or administrative impact on contractors or offerors.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. 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 206 and 219

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 206 and 219 are amended as follows:

■ 1. The authority citation for 48 CFR parts 206 and 219 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 206—COMPETITION REQUIREMENTS

■ 2. Add section 206.303–1 to read as follows:

206.303–1 Requirements.

(a) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), no justification and approval is required for a sole-source contract under the 8(a) authority (15 U.S.C. 637(a)) for an amount not exceeding $100 million.

(b) In lieu of FAR 6.303–1(b), in accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), contracting officers shall not award a sole source contract under the 8(a) authority (15 U.S.C. 637(a)) for an amount exceeding $100 million unless—

(1) The contracting officer justifies the use of a sole source contract in writing in accordance with FAR 6.303–2;

(2) The justification is approved in accordance with 206.304(a)(S–71); and

(3) The justification and related information are made public after award in accordance with FAR 6.305.

3. Amend section 206.303–2 by redesignating paragraph (b)(i) as (b)(ii) and adding a new paragraph (b)(i) and paragraph (d) to read as follows:

206.303–2 Content.

(b)(i) In lieu of the threshold at FAR 6.303–2(b), each justification shall include the information at FAR 6.303–2(b), except for sole-source 8(a) contracts over $100 million (see paragraph (d) of this section).

* * * * *

(d) In lieu of the threshold at FAR 6.303–2(d), each justification for a sole-source 8(a) contract over $100 million shall include the information at FAR 6.303–2(d).

■ 4. Amend section 206.304 by adding paragraph (a)(S–71) to read as follows:

206.304 Approval of the justification.

(a) * * *

(S–71) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92), the head of the procuring activity is the approval authority for a proposed sole-source 8(a) contract exceeding $100 million. This authority may only be delegated to an officer or employee who—

(1) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(2) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

PART 219—SMALL BUSINESS PROGRAMS

■ 5. Amend section 219.808–1 by adding paragraph (a) to read as follows:

219.808–1 Sole source.

* * * * *

(a) In lieu of the threshold at FAR 19.808–1(a), the SBA may not accept for negotiation a DoD sole-source 8(a) contract exceeding $100 million unless DoD has completed a justification in accordance with FAR 6.303 and 206.303–1(b).

[FR Doc. 2020–11750 Filed 6–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 208

[Docket DARS–2020–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making needed technical amendments to update the Defense Federal Acquisition Regulation Supplement (DFARS).

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(A&S)DPC(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows. Section 208.002 heading is corrected to align with the Federal Acquisition Regulation naming convention for this section and to add new paragraphs (a)(1) introductory text and (a)(1)(i) to provide a notice to contracting officers to see DFARS Procedures, Guidance, and Information 208.002(a)(1)(i) to obtain information on available items in DoD's property inventories. In paragraph (a)(1)(v), two references to ''Subpart'' are changed to ''subpart''.

List of Subjects in 48 CFR Part 208

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 208 is amended as follows:

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 208 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise section 208.002 to read as follows:

208.002 Priorities for use of mandatory Government sources.

(a)(1) *Supplies.* (i) See the guidance at PGI 208.002(a)(1)(i) to obtain information on available items in DoD's property inventories.

(v) See subpart 208.70, Coordinated Acquisition, and subpart 208.74, Enterprise Software Agreements.

[FR Doc. 2020–11752 Filed 6–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 210, 212, 215, and 234

[Docket DARS–2019–0050]

RIN 0750–AK65

Defense Federal Acquisition Regulation Supplement: Market Research and Consideration of Value for the Determination of Price (DFARS Case 2019–D027)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement several sections of the National Defense Authorization Act for Fiscal Year 2017 to address how contracting officers may require the offeror to submit relevant information to support market research for price analysis, and allow an offeror to submit information relating to the value of a commercial item to aid in the determination of the reasonableness of the price of such item.

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 50812 on September 26, 2019, to implement sections 871 and 872 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328). Section 871 modifies 10 U.S.C. 2377, Preference for acquisition of commercial items, to state that, to the extent necessary to support market research for determination of the reasonableness of the price of commercial items, the contracting officer shall use the information submitted under 10 U.S.C. 2379(d) in the case of major weapon systems acquired as commercial items; and in the case of other items, the contracting officer may require the offeror to submit relevant information. Section 872 modifies 10 U.S.C. 2379, Requirement for determination by Secretary of Defense and notification to Congress before procurement of major weapon systems as commercial items, to allow an offeror to submit information or analysis relating to the value of a commercial item. One respondent submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

The final rule removes the discussion of value analysis at DFARS 234.7002(d)(5) and the associated definition of ''value analysis'' at DFARS 234.7001 from the proposed rule.

B. Analysis of Public Comments

Comment: The respondent supports the proposed rule, with a few exceptions. The respondent stated that in the proposed definition of ''value analysis'' at DFARS 234.7001, ''cost''

should be replaced with ''price.'' According to the respondent, this is consistent with the Contract Pricing Reference Guide, which states, ''A value analysis estimate results from a specialized analysis of the function of a product and its related price.''

In addition, the respondent recommended that the word ''legitimate'' should be removed from the proposed DFARS 234.7002(d)(5), because ''legitimate'' is a subjective term that cannot be measured. According to the respondent, the policy should leave the determination of value to the discretion of the contracting officer.

Response: The final rule deletes the discussion of the use of value analysis and the associated definition. This discussion and definition are not necessary for implementation of the statute, which provides that an offeror may submit information or analysis relating to the value of a commercial item to aid in the determination of the reasonableness of the price of such item and that the contracting officer may consider such information or analysis in addition to other information submitted. The final rule still provides a reference to guidance at DFARS Procedures Guidance and Information 234.7003(d)(5), which in turn references to the Department of Defense Guidebook for Acquiring Commercial Items, Part B, Commercial Item Pricing—the more current guidebook.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not propose to add or modify any provisions, clauses, or the prescriptions for any provisions or clauses.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this final rule to 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.* However, a final regulatory flexibility analysis has been prepared and is summarized as follows:

This final rule is issued in order to implement sections 871 and 872 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328). The objective of this rule is to address the use of market research and consideration of value to support the determination of price reasonableness when acquiring commercial items. The legal basis of the rule is sections 871 and 872 of the NDAA for FY 2017.

There were no public comments in response to the initial regulatory flexibility analysis.

Based on data from the Federal Procurement Data System, DoD awarded 38,000 new commercial contracts to 16,429 small entities in FY 2018. There are an additional unknown number of small entities that submitted offers and did not receive awards (estimated at several thousand).

This rule does not impose any new reporting, recordkeeping, or other compliance requirements on small entities. DFARS 252.215–7010, Requirements for Certified Cost or Pricing Data, and Data Other Than Certified Cost or Pricing Data, already requires offerors to provide information necessary to determine that the price is fair and reasonable. Offerors are allowed, but not required, to submit information or analysis relating to the value of a commercial item for consideration by the contracting officer in determining price reasonableness.

DoD did not identify any significant alternatives that would minimize or reduce the significant economic impact, because there is no significant impact on small entities.

VII. Paperwork Reduction Act

The rule does not contain any new 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) or impact any existing information collection requirements.

List of Subjects in 48 CFR Parts 210, 212, 215, and 234

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 210, 212, 215, and 234 are amended as follows:

■ 1. The authority citation for 48 CFR parts 210, 212, 215, and 234 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 210—MARKET RESEARCH

■ 2. Amend section 210.001 by—

■ a. In paragraph (a) introductory text removing '', agencies shall'';

■ b. Redesignating paragraphs (a)(i) and (ii) as paragraphs (a)(i)(A) and (B), respectively;

■ c. In the newly redesignated paragraph (a)(i)(A) removing ''Conduct'' and adding ''Agencies shall conduct'' in its place;

■ d. In the newly redesignated paragraph (a)(i)(B) removing the period and adding ''; and'' in its place; and

■ e. Adding a new paragraph (a)(ii).

The addition reads as follows:

210.001 Policy.

* * * * *

(a) * * *

(ii) Contracting officers shall use market research, where appropriate, to inform price reasonableness determinations (see 212.209 and 234.7002).

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 212.209 by revising paragraph (a) to read as follows:

212.209 Determination of price reasonableness.

(a) In accordance with 10 U.S.C. 2377(d), agencies shall conduct or obtain market research to support the determination of the reasonableness of price for commercial items contained in any bid or offer submitted in response to an agency solicitation. To the extent necessary to support such market research, the contracting officer—

(1) In the case of major weapon systems items acquired as commercial items in accordance with subpart 234.70, shall use information submitted under 234.7002(d); and

(2) In the case of other items, may require the offeror to submit other relevant information.

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

■ 4. Amend section 215.403–3 by adding paragraph (c) to read as follows:

215.403–3 Requiring data other than certified cost or pricing data.

* * * * *

(c) *Commercial items.* For determinations of price reasonableness of major weapon systems acquired as commercial items, see 234.7002(d).

PART 234—MAJOR SYSTEM ACQUISITION

■ 5. Revise section 234.7001 to read as follows:

234.7001 Definition.

As used in this subpart—

Major weapon system means a weapon system acquired pursuant to a major defense acquisition program.

■ 6. Amend section 234.7002 by revising paragraph (d) introductory text and adding paragraph (d)(5) to read as follows:

234.7002 Policy.

* * * * *

(d) * * * See 212.209(a) for requirements of 10 U.S.C. 2377 with regard to market research.

* * * * *

(5) An offeror may submit information or analysis relating to the value of a commercial item to aid in the determination of the reasonableness of the price of such item. A contracting officer may consider such information or analysis in addition to the information submitted pursuant to paragraphs (d)(1) and (2) of this section. For additional guidance see PGI 234.7002(d)(5).

[FR Doc. 2020–11748 Filed 6–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 215

[Docket DARS–2020–0015]

RIN 0750–AK91

Defense Federal Acquisition Regulation Supplement: Repeal of Annual Reporting Requirements to Congressional Defense Committees (DFARS Case 2020–D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2018.

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly R. Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement section 1051 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 1051 repealed numerous DoD reporting requirements to Congress, to include the annual reporting requirements for commercial items and exceptional case exceptions and waivers under section 817 of the NDAA for FY 2003 (Pub. L. 107–314). The section 817 reporting requirements and guidance regarding exceptions and waivers to cost or pricing data requirements were implemented at DFARS 215.403–3(c). Pursuant to section 1051, this rule removes the reporting requirements and guidance.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create or revise any solicitation provisions or contract clauses. This rule removes rescinded reporting requirements for exceptions and waivers of cost or pricing data to congressional defense committees.

III. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the rule merely removes two statutory reporting requirements that have been rescinded.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. 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 Part 215

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 215 is amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

■ 1. The authority for 48 CFR part 215 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 215.403–1 by—

■ a. In paragraph (c)(3)(A) removing ''PGI 215.403–1(c)(3)(A)'' and adding ''PGI 215.403–1(c)(3)'' in its place;

■ b. Removing paragraph (c)(3)(B);

■ c. Redesignating paragraph (c)(3)(C) as paragraph (c)(3)(B); and

■ d. Revising paragraph (c)(4)(B).

The revision reads as follows:

215.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

* * * * *

(c) * * *

(4) * * *

(B) By November 30th of each year, departments and agencies shall provide a report to the Director, Defense Pricing and Contracting, Pricing and Contracting Initiatives (DPC/PCI), of all waivers granted under FAR 15.403–1(b)(4), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of $19.5 million or more. See PGI 215.403–1(c)(4)(B) for the format and guidance for the report.

* * * * *

[FR Doc. 2020–11749 Filed 6–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS–2018–0004]

RIN 0750–AJ22

Defense Federal Acquisition Regulation Supplement: Restrictions on Acquisitions From Foreign Sources (DFARS Case 2017–D011); Correction

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Correcting amendments.

SUMMARY: On December 21, 2018, DoD published a final rule to implement sections of the National Defense Authorization Act for Fiscal Year 2017, including a section that added Australia and the United Kingdom to the definition of the ''National Technology and Industrial Base.'' This action corrects several sections of the regulations where the revised definition of the ''National Technology and Industrial Base'' was inadvertently not implemented. This document corrects the final regulations in order to acquire from Australia or the United Kingdom, without waiver, certain naval vessel components.

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 83 FR 42828 on August 24, 2018, that included implementation of section 881(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017. The final rule was published in the **Federal Register** at 83 FR 65560 on December 21, 2018. Section 881(b) amends 10 U.S.C. 2500(1) by adding Australia and the United Kingdom of Great Britain and Northern Ireland to the United States and Canada, as countries within which the activities of the national technology and industrial base are conducted. Title 10 U.S.C. 2534 requires that DoD only procure certain items, if the manufacturer of the items is part of the national technology and industrial base, unless a waiver is granted by the Secretary of Defense (previously delegated to the Under Secretary of Defense (Acquisition, Technology, and Logistics); now the Under Secretary of Defense (Acquisition and Sustainment). The Under Secretary of Defense (Acquisition, Technology and Logistics) had granted annual waivers for certain naval vessel components from the United Kingdom. Such waivers are no longer required now that the United Kingdom is part of the national technology and industrial base.

II. Discussion and Analysis

At the time of the final rule, the DFARS addressed the following restrictions of 10 U.S.C. 25234:

Citation	Item	Waiver	Action taken
225.7004	Foreign buses	No	Added Australia and U.K. at 225.7004–1 and 225.7004–3.
225.7006, 252.225–7037, and 252.225–7038.	Air circuit breakers for naval vessels	Yes—U.K.	Added Australia and U.K. at 225.7006–1. Added Australia at 252.225–7037(b) and 252.225–7038. Removed the information regarding the U.K. waiver at 225.7006–3(b) and 225.7006–4(a)(2).
225.7010	Certain naval vessel components: gyrocompasses, electronic navigation chart systems, steering controls, pumps, propulsion and machinery control systems, totally enclosed lifeboats.	Yes—U.K.	Inadvertently, no action taken.

The actions comparable to those that were taken with regard to the air circuit breakers for naval vessels should have been taken for the other naval vessel components. These naval vessel components are listed in a separate section, because 10 U.S.C. 2534(h) prohibits the use of contract clauses or certifications to implement this restriction. Australia and the United Kingdom should have been added to the list of countries in the national technology and industrial base at DFARS 225.7010–1 and paragraph (b) addressing the waiver for items from the U.K. at 225.7010–3 should have been removed. Because of the existing waiver for certain naval vessel components from the United Kingdom, this lack of action has only impacted the acquisition of these naval vessel components from Australia.

In addition, there is a section at DFARS 225.7008 that addresses the waiver of restrictions of 10 U.S.C. 2534 in general. For consistency with the new definition of ''national technology and industrial base,'' Australia and the United Kingdom should have been added to the discussions of satisfactory quality, only one source, and unreasonable costs at DFARS 225.7008(a)(2)(ii) and (iii) and (a)(3)

respectively; and 225.7008(b) that addresses the waiver of the restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom should have been deleted as no longer necessary. There have been no requests for waiver of 10 U.S.C. 2534 since the final rule was issued.

III. Publication of This Final Rule Correction for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled ''Publication of Proposed Regulations.'' Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule correction is not required to be published for public comment, because the public received notice and opportunity to comment on the proposed rule, which stated that—

- The rule was implementing section 881(b) of the NDAA for FY 2017, that Australia and the United Kingdom were now included as the countries within which the activities of the national technology and industrial base are conducted;
- Title 10 U.S.C. 2534 requires that DoD only procure certain items if the manufacturer of the items is part of the national technology and industrial base; and
- DFARS sections that implement the restrictions of 10 U.S.C. 2534 are being modified to allow acquisitions from Australia and the United Kingdom.

In addition, the proposed rule mentioned that annual waivers authorizing purchases from the United Kingdom cover air circuit breakers for naval vessels and certain other naval vessel components.

Immediate correction of the error is necessary, because the new definition of national technology and industrial base has been in effect since December 2, 2019, and this correction is necessary in order to avoid inconsistent implementation of the restrictions of 10 U.S.C. 2534.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This final rule correction does not impact any provisions or clauses.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This final rule correction rule is not an E.O. 13771 regulatory action, because this rule is not significant under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VIII. Paperwork Reduction Act

The final rule correction 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 Part 225

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 225.7008 by—

■ a. Removing paragraph (b).

■ b. Redesignating paragraph (a)(2) and (3) as paragraphs (b) and (c), respectively;

■ c. Redesignating paragraphs (a) introductory text and (a)(1)(i) through (iv) as undesignated introductory text and paragraphs (a)(1) through (4), respectively;

■ d. In the newly redesignated paragraph (a)(1) introductory text, removing ''(Acquisition, Technology, and Logistics) (USD(AT&L))'' and adding ''(Acquisition and Sustainment) (USD(A&S))'' in its place;

■ e. Further redesignating newly redesignated paragraphs (a)(1)(A) and (B) as paragraphs (a)(1)(i) and (ii), respectively;

■ f. Further redesignating newly redesignated paragraphs (a)(4)(A) and (B) as paragraphs (a)(4)(i) and (ii), respectively;

■ g. Further redesignating newly redesignated paragraphs (b)(i) through (v) as paragraphs (b)(1) through (5), respectively; and

■ h. Revising newly redesignated paragraphs (b)(2) and (3) and (c).

The revisions read as follows:

225.7008 Waiver of restrictions of 10 U.S.C. 2534.

* * * * *

(b) * * *

(2) Satisfactory quality items manufactured in the United States, Australia, or Canada, or the United Kingdom are not available.

(3) Application of the restriction would result in the existence of only one source for the item in the United States, Australia, or Canada, or the United Kingdom.

* * * * *

(c) A restriction is waived when it would cause unreasonable costs. The cost of an item of U.S., Australian, Canadian, or United Kingdom origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items that are not of U.S., Australian, Canadian, or United Kingdom origin.

225.7010–1 [Amended]

■ 3. Amend section 225.7010–1 introductory text by removing ''United States or Canada'' and adding ''United States, Australia, Canada, or the United Kingdom'' in its place.

■ 4. Revise section 225.7010–3 to read as follows:

225.7010–3 Waiver.

The waiver criteria at 225.7008(a) apply to this restriction.

[FR Doc. 2020–11756 Filed 6–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 249 and 252

[Docket DARS–2019–0060]

RIN 0750–AK56

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Notification of Anticipated Contract Termination or Reduction" (DFARS Case 2019–D019)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update legal and DFARS citations in an existing DFARS clause, conform the clause text to the current DFARS convention regarding the use of dollar thresholds in contract clauses; and remove clause text that is no longer needed to implement the underlying statutory language. The rule is pursuant to action taken by the DoD Regulatory Reform Task Force.

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 58366 on October 31, 2019, to identify the dollar thresholds of the implementing statute (10 U.S.C. 2501 note) for DFARS 249.70 and DFARS clause 252.249–7002, Notification of Anticipated Contract Termination or Reduction, in accordance with current DFARS drafting conventions, and update the clause to reflect the current statute under which employee and training opportunities apply under the clause. No public comments were received in response to the proposed rule. Minor editorial changes are made in the final rule to a cross-reference at DFARS 252.249–7002(c)(2) and the formats of the statutory references.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses. The rule simply updates legal and DFARS citations in the clause and removes unnecessary information. This rule does not change the applicability of the affected clause, which does not apply to contracts valued at or below the simplified acquisition threshold, or commercial or commercially available off-the-shelf items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of DFARS clause 252.249–7002, Notification of Anticipated Contract Termination or Reduction, to: (1) Update legal and DFARS citations in the clause; (2) remove text that is no longer necessary to implement 10 U.S.C. 2501 note; and (3) conform the clause text to the current DFARS convention for referencing dollar thresholds in a clause. The objective of this rule is to provide accurate and up-to-date information to contractors and maintain consistency within the DFARS clause text. The modification of this DFARS text and clause is pursuant to action taken by the Regulatory Reform Task Force under Executive Order 13777, Enforcing the Regulatory Reform Agenda.

No public comments were received in response to the initial regulatory flexibility analysis.

DoD does not collect data on the number of small businesses that have been awarded contracts under a major defense programs and have also received notice of contract termination or a substantial reduction in funding resulting from an Appropriations Act. Senior DoD Program Acquisition officials estimate that such notification of the termination or substantial reduction in a major defense program occurs, on average, no more than once or twice per year. This rule is not expected to have a significant impact on small business entities, as it does not impose any new requirements or change any existing requirements for small business entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

DoD did not identify any significant alternatives that would minimize or reduce the significant economic impact, because there is no significant impact on small entities.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, the changes to DFARS 252.249–7002 do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0533, titled: DFARS Subpart 249—Termination of Contracts.

List of Subjects in 48 CFR Parts 249 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 249 and 252 are amended as follows:

PART 249—TERMINATION OF CONTRACTS

■ 1. The authority citation for part 249 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Amend section 249.7003 by—

■ a. In paragraph (a), removing "Section 824" and "Job Training Partnership Act (29 U.S.C. 1661 and 1662)" and adding "section 824" and "Workforce Innovation and Opportunity Act (29

U.S.C. Chapter 32)'' in their places, respectively;

■ b. In the paragraph (b) introductory text, removing ''to:'' and adding ''to—'' in its place;

■ c. In paragraph (b)(1), removing ''act.'' And adding ''act; and'' in its place;

■ d. Revising paragraph (c).

The revision reads as follows:

249.7003 Notification of anticipated contract terminations or reductions.

* * * * *

(c) When subcontracts have been issued, the prime contractor is responsible for—

(1) Providing notice of the termination or substantial reduction in funding to all first-tier subcontractors with a subcontract valued equal to or greater than $700,000; and

(2) Requiring that each subcontractor—

(i) Provide such notice to each of its subcontractors for subcontracts valued greater than $150,000; and

(ii) Impose a similar notice and flowdown requirement in subcontracts valued greater than $150,000 at all tiers.

■ 3. Add section 249.7004 to read as follows:

249.7004 Contract clause.

Use the clause at 252.249–7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. The authority citation for part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 5. Amend section 252.249–7002 by—

■ a. In the introductory text, removing ''249.7003(c)'' and adding ''249.7004'' in its place;

■ b. Removing the clause date ''(MAY 2019)'' and adding ''(JUN 2020)'' in its place;

■ c. Revising paragraphs (b) and (c);

■ d. In paragraph (d)(1), removing ''225.870–4(c)(2)(i)(A)(*1*)'' and adding ''249.7003(c)(1)'' in its place;

■ e. In paragraphs (d)(2)(i) and (ii), removing ''225.870–4(c)(2)(i)(C)'' and adding ''249.7003(c)(2)(i)'' and ''249.7003(c)(2)(ii)'' in their place, respectively; and

■ f. Removing paragraph (e).

The revisions read as follows:

252.249–7002 Notification of Anticipated Contract Termination or Reduction.

* * * * *

(b) *Scope.* This clause implements section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) and section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201), which are intended to help establish benefit eligibility under the Workforce Innovation and Opportunity Act (29 U.S.C. chapter 32) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

(c) *Notice to employees and state and local officials.* (1) Within 2 weeks after the Contracting Officer notifies the Contractor that contract funding will be terminated or substantially reduced, the Contractor shall provide notice of such anticipated termination or reduction to—

(i) Each employee representative of the Contractor's employees whose work is directly related to the defense contract; or

(ii) If there is no such representative, each such employee;

(iii) The State or entity designated by the State to carry out rapid response activities described in the Workforce Innovation and Opportunity Act (29 U.S.C. 3174(a)(2)(A)(i)); and

(iv) The chief elected official of the unit of general local government within which the adverse effect may occur.

(2) The notice provided an employee under paragraph (c)(1) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under the Workforce Innovation and Opportunity Act (29 U.S.C. Chapter 32).

* * * * *

[FR Doc. 2020–11747 Filed 6–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2020–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendment; Correction

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Correcting amendment.

SUMMARY: DoD is correcting final regulations that published in the **Federal Register** on April 8, 2020, to reflect that the clause date for the DFARS section on duty-free entry should be ''(APR 2020)''.

DATES: Effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(A&S)DPC(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: On April 8, 2020, DoD published in the **Federal Register** at 85 FR 19681 a final rule titled ''Technical Amendments''. The purpose of this correction is to reflect that the clause date for DFARS 252.225–7013, Duty-Free Entry, should be ''(APR 2020)'' and not ''(MAR 2020)'' as published in the technical amendment.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225–7013 [Amended]

■ 3. Amend section 252.225–7013 by removing the clause date of ''(MAR 2020)'' and adding ''(APR 2020)'' in its place.

[FR Doc. 2020–11755 Filed 6–4–20; 8:45 am]

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Proposed Rules

Federal Register
Vol. 85, No. 109
Friday, June 5, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2018–0041]

RIN 0579–AE48

Amendments to the Pale Cyst Nematode Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would amend the domestic quarantine regulations for pale cyst nematode by adding procedures to allow persons to review and comment on the protocols for regulating and deregulating infested and associated areas. We are taking this action to allow persons to comment on the science on which we have established our infested and associated field protocols and on the sources we have used to develop the protocol principles and methods currently used. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the proposed rule published on March 4, 2019 (84 FR 7304–7306), is reopened. We will consider all comments that we receive on or before July 6, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0041.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0041, 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-2018-0041* 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. Lynn Evans-Goldner, National Policy Manager, Office of the Deputy Administrator, PPQ, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737; (301) 851–2286; *lynn.evans-goldner@usda.gov.*

SUPPLEMENTARY INFORMATION: On March 4, 2019, we published in the **Federal Register** (84 FR 7304–7306, Docket No. APHIS–2018–0041) a proposal [1] to amend the domestic quarantine regulations for *Globodera pallida* (pale cyst nematode, or PCN) by adding procedures that allow persons to review and comment on the protocols for regulating and deregulating quarantined and associated areas. We took this action in response to a court order [2] requiring the Animal and Plant Health Inspection Service (APHIS) to solicit public input into the development of the protocols used for deregulating fields for PCN.

We solicited comments concerning our proposal for 60 days ending May 3, 2019. We reopened the comment period for 30 days ending July 26, 2019, in response to commenters who experienced technical difficulties with accessing the protocols online.

During the comment period, we made available for comment six documents: The Infested Field Confirmatory Policy, the Regulated Field Survey and Laboratory Result Definitions, the Infested Field Deregulation Protocol (if remaining in host crop production), the Associated Field Deregulation Protocol (if remaining in host crop production), the Deregulation Protocol for Agricultural Land No Longer in Host Crop Production, and the Analysis in Support of Certification that the Rule will not have a Significant Economic Impact on a Substantial Number of Small Entities.

We received a total of 19 comments, 2 of which were submitted twice. One person commented that we did not adequately explain the science and sources for our confirmatory and deregulatory field protocols contained in the applicable documents. Out of an abundance of caution and transparency, and in deference to the court which directed us to provide ''requisite public notice and commenting on the Deregulation Protocols,'' APHIS is providing the public with an additional opportunity to comment on the science supporting the protocols, including the sources of the methods informing their content. Accordingly, we are including more information about the protocols in this document and are reopening the comment period for 30 days.

APHIS' prompt response to finding PCN in Idaho, which resulted in the drafting and publication of the interim rule in 2007,[3] drew extensively upon the U.S. Department of Agriculture (USDA) Emergency Programs Manual (EPM) (February 2002).[4] The EPM lays out in general form the procedures necessary for addressing plant pest emergencies, including development of an interim rule that establishes survey activities, quarantines, movement restrictions, and other pest measures intended to mitigate or eradicate the pest. APHIS has implemented similar plant pest responses throughout the United States in other programs to address golden nematode, spotted lanternfly, potato wart, gypsy moth, and fruit flies. Similar types of early detection and rapid response efforts are employed by other Federal, State, and international plant protection organizations.

Based on the initial regulations for controlling PCN that we finalized through rulemaking, we subsequently developed protocols for regulating and deregulating PCN-infested and associated fields.[5] APHIS has harmonized its regulations and enforcement efforts with those of the Idaho State Department of Agriculture

[1] To view the proposed rule, supporting documents, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0041.*

[2] Memorandum Decision and Order, Mickelsen Farms, LLC, et al. v. APHIS, et al., March 20, 2018. *https://www.gpo.gov/fdsys/pkg/USCOURTS-idd-1_15-cv-00143/pdf/USCOURTS-idd-1_15-cv-00143-2.pdf.*

[3] Docket No. APHIS–2006–0143; 72 FR (51975–51988), September 12, 2007.

[4] To view the manual on regulations.gov, see footnote 1.

[5] See footnote 1 for a link to the protocols.

and the Canadian Food Inspection Agency. The protocol mitigations work collectively as a systems approach and have significantly reduced the rate of PCN spread by regulating infested and associated fields and establishing sanitation requirements for equipment and vehicles leaving infested and associated fields. In the absence of such regulatory measures, we note that statistical analysis of human-assisted spread of PCN estimates a mean spread rate of 3.29 miles/year.[6] This suggests that in the 14 years since PCN was first detected in Idaho, the pest could have spread more than 46 miles from the first infested field identified. With regulatory controls in place, PCN is limited to an area within an 8.5-mile radius, only 11.5 miles in straight line distance.

Below, we list the procedures used in the protocols and explain the scientific rationale and background we relied upon as grounds for including them. As noted above, many, if not most, of these procedures have been employed by USDA and State pest programs for decades across the United States, in various forms and for many different plant pests and crops, including nematodes on potatoes. Internationally, Australia and Japan, which also do not have widespread PCN infestations, have also relied on these and similar best practices to help them respond to PCN detections in their respective countries.[7]

Containment Measures for PCN

Different types of farming equipment can spread *Globodera* cysts,[8] with potato diggers representing the greatest potential risk. The risk is high because of the large amount of soil that adheres to the digger and because PCN population densities are highest at harvest time following production of a susceptible cultivar. Additionally, the new cysts present at harvest contain a large number of viable eggs that provide a greater chance of successful population establishment.[9] Consequently, every precaution should be taken to prevent the spread of potato cyst nematodes. Nematologists advise those who work in the fields to clean equipment of soil before entering non-infested sites.[10]

Based on these established best practices, the PCN program protocols include requirements for pressure washing or using steam to clean all farm equipment, vehicles, or other conveyances that have been in a PCN infested or associated field. These procedures ensure that nematodes are not carried into new fields via soil or equipment. Washing and steam sterilization of equipment has been a phytosanitary standard for nematode and other plant pest control for decades, and the techniques required in the PCN deregulation protocols are similar to plant pest sanitation protocols used throughout the United States and the world. More specifically, the PCN sanitation practices are modeled in part after those employed by the USDA Golden Nematode program for controlling the spread of that pest in New York State. A 2006 version of the USDA Golden Nematode Manual requires that all soil be removed by cleaning farm equipment, mechanized soil moving equipment, farm tools, used containers, and other similar articles using pressure washing and steam treatment.[11]

Soil Sampling and Detection Strategies for PCN

Soil sampling rates used by the PCN program for associated and infested fields are supported by a model that combines the medium scale distribution of cysts and the small scale distribution of cysts within square meters. The medium scale distribution provides the expected population densities at each position within the focus and refers to the size and shape of a focus resulting from farming practices. The small scale distribution represents the multiplication of *Globodera* on the roots of evenly spaced potato plants.

A computer program, SAMPLE, analyzes soil sampling methods.[12] The parameters of the model include gradient length and width, which represent the medium scale distribution and the aggregation factor of the negative binomial distribution (small scale distribution). Terms of the soil sampling method are also factored into the program. The terms are maximum grid cell size, sampling points per hectare (ha), core size cubic centimeters (cc), soil sample size (cc) per ha, and bulk sample size (gram). In this program, the selected average detection probability is set at 90 percent. The following sampling rates were calculated to detect extremely small infestations at three critical phases of the program: Deregulation of associated fields, monitoring eradication progress on infested fields, and deregulation of infested fields (in-field bioassay). The Canadian and United States Guidelines on Surveillance and Phytosanitary Actions for the potato cyst nematodes *Globodera rostochiensis* and *Globodera pallida* recommend a minimum sample size of 20,000 cc per ha (approximately 8,000 cc per acre) taken either manually or mechanically. When a similar method was analyzed with the SAMPLE program using 15,000 cc/ha (approximately 6,000 cc per acre) with a bulk sample size of 22.5 kilogram (kg), it had a detection probability of 99 percent with a central population density (CPD) of 50 cysts per kg of soil. For small infestation foci where the CPD is 5 cysts per kg of soil, the method has a detection probability of only 22 percent.

The delimiting rate for associated fields is 8,000 cubic centimeters (cc)/acre (ac), approximately 20 pounds (lbs)/ac. According to the SAMPLE model, for an infestation with a CPD of 50 cysts/kg in a field, the model shows a detection probability of 98.55 percent at the delimiting survey rate. Associated fields are required to undergo two surveys at the delimiting rate, each following a host crop. At a CPD of 50 cysts/kg, the second sampling detection should remain high. To calculate the cumulative detection probabilities with repetitive sampling, the product of both non-detection probabilities are combined. The probability of no detection each year is $1 - 0.9855 = 0.0145$. If this happens twice, the combined probability of no detection equals $0.0145^2 = 0.00021025$. Detection after two crops surveyed by this method is $1 - 0.00021025 = 0.9998$, or 99.98 percent. For small infestations of 5 cysts/kg (approximately 2 cysts per

[6] Banks, N.C., et. al. Dispersal of Potato Cyst Nematodes Measured Using Historical and Spatial Statistical Analyses. *Phytopathology,* Vol. 102, No. 6, 2012.

[7] IPPC reports are located at *https://www.ippc.int/en/countries/australia/pestreports/2010/09/eradication-of-potato-cyst-nematode-pcn-from-western-australia/* and at *https://www.ippc.int/en/countries/japan/pestreports/2016/10/outbreak-of-globodera-pallida-4/.*

[8] Brodie, B.B., Probability of *Globodera rostochiensis* Spread on Equipment and Potato Tubers. *Journal of Nematology* 25(2):291–296. 1993.

[9] Brodie, B.B., and M.L. Brucato. Relation of Cyst Age and Egg Density to Establishment of *Globodera Rostochiensis* populations. *Journal of Nematology* 21:4 October 1989.

[10] Stienstra, W.C., and D.H. McDonald. The Soybean Cyst Nematode. Minnesota Extension Service AG–FO–3935 1990.

[11] Golden Nematode Program Manual (2006): 2–8–18. Similar steam and pressure cleaning requirements are included in earlier versions of the manual published in 1968 and 1992. All versions are available via the link to *regulations.gov* in footnote 1 of this document.

[12] Additional descriptions of these sampling methods are: (1) Been, T.H. and Schomaker, C.H. 1998. Sampling methods for fields with patchy infestations of the potato cyst nematode (*Globodera* spp.): A simulation model to develop and evaluate sampling methods. In *Quantitative studies on the management of potato cyst nematodes* (*Globodera* spp.) *in the Netherlands.* p. 319; and (2) Been, T.H. and Schomaker, C.H. 2000. Development and evaluation of sampling methods for fields with infestation foci of potato cyst nematodes (*Globodera rostochiensis* and G. *pallida*). *Phytopathology* 90:647–656.

pound) of soil, however, repetitive sampling is even more important because the detection probability starts at 22 percent but increases with each host crop.

The infested field monitoring survey rate is 80,000 cc/ac, approximately 200 lbs/ac. Because of the small infestation foci in Idaho, a declining cyst population from the absence of host crops, and the application of eradication treatments, intensive sampling increases the chance of detection and the accuracy of population estimation. As a result, the intense monitoring survey rate of 80,000 cc/ac for infested fields is scientifically supported.

The infested field in-field bioassay rate is 20,000 cc/ac, approximately 50 lbs/ac. This rate is scientifically justified by the model where a small infestation with a CPD of 5 cysts/kg has a detection probability of 22 percent. As described for the delimiting survey method, the model shows that when the CPD increases, the detection probability also increases. Because the in-field bioassay reintroduces host crops and requires soil surveys following each of three host crops, the incipient population increases; therefore, detection probability also significantly increases.

Soil samples are collected at the field surface; however, potato harvest machinery and annual tillage practices effectively mix the top layer of the soil such that soil samples represent at least the top 30 centimeters of the soil profile. PCN program sampling rates are higher than those used by many other countries where PCN infestations are widespread and have been present for decades. Lower sampling rates are generally used for managing high infestations and reducing economic impacts of the pest, not for eradicating nor limiting spread of the pest.

Infested Field Confirmatory Policy

To evaluate a field for PCN under the confirmatory protocol, a soil sample is required. Sanitary requirements for entering a field (boots, washing of tools), soil bagging and labeling, and vehicle disinfection are longstanding and widely observed practices used by APHIS to prevent the spread of plant pests from infected fields.

The protocol for determining infested field regulation for PCN is based on our knowledge about the biology and epidemiology of PCN. Specimens from a soil sample must be definitively identified and confirmed by an APHIS-approved laboratory using morphological and molecular DNA-based methods. Molecular methods provide an additional, confirmatory step along with morphological methods.

Details of APHIS' use of DNA and morphological/morphometric identification of PCN are described in a 2007 scientific article,[13] which is provided via a link in the confirmatory protocol. In the 1990s, nematologists began using DNA technology extensively for identification purposes, while morphological identification of nematodes has been widely in practice for decades. The technical minimum threshold for declaring a field infested/positive for PCN is met by detecting a minimum of two cysts from two samples that were identified as PCN by morphological/morphometric analysis, and at least one of the cysts was viable and confirmed as PCN by molecular (DNA) analysis. It is not necessary for the two samples to come from the same survey event.

Regulating Associated Fields

The protocol for determining associated field regulation is modeled in part after the USDA Golden Nematode Program and its criteria for determining ''exposed land'' as described in the USDA Golden Nematode Manual (2006 version).[14] Unlike the Golden Nematode Program approach of regulating large blocks of land or entire counties, the PCN Program adopted a more conservative field-by-field regulatory approach in which only confirmed infested fields and those at high risk for infestation are regulated. Associated fields are identified through the process of researching an infested field's history, going back 10 years, to identify other fields that may have been exposed to infested field soil.

Infested Field Deregulation Protocol (if Remaining in Host Crop Production)

Fields that APHIS has determined to be infested with PCN are eligible for release under a deregulation protocol if the field is used for host crop production. The infested field deregulation protocol employs strategies that have been used for decades to control nematodes on potatoes and other crops.

Fixed Grid Pattern Field Sampling

In the Infested Field Deregulation Protocol, APHIS conducts an initial full field survey in a fixed grid pattern at an 80,000 cc of soil per acre sampling rate. The sampling results (number of cysts per sample) are used to map the relative distribution and population of cysts in the field, and infestation foci are located. The fixed grid survey is a standard industry practice for monitoring several types of field activities, including mapping infestations and monitoring pest eradication treatments. For instance, one study APHIS drew upon in developing the protocols describes a method for PCN soil sampling by which a field is divided into 20 x 20 meter grid squares, then soil samples are collected from each grid. The samples are processed to separate cysts from the soil, and the number of cysts per grid is determined by counting. The results of the cyst counts are plotted to produce a map of the infestation across the field.[15] Identifying infestation foci informs soil treatment decisions and cost-effective monitoring of treatment efficacy over time. This method is the basis for the PCN program's mapping surveys and subsequent grid monitoring surveys.

The PCN sampling method for infested fields is based on a 2 x 2 grid pattern method (subsamples are collected 2 paces apart, every 2 paces) modeled in part after a grid survey method described in GN program manuals from 1992 and 2006. The 2006 manual describes the steps for such a survey, beginning with measuring the dimensions of the field, dividing the field into a grid, and sampling the soil following the grid pattern. If nematodes are located in a sample, the grid makes it possible to trace that sample back to a location in the field.[16]

After sampling results are determined, a field may undergo a series of optional, PCN program-sponsored eradication treatments, which are monitored according to initial grid survey results. These treatments are conducted at the discretion of the grower. Eradication treatments have included Telone® II fumigation and the trap crop litchi tomato. Telone® and Telone® II have been widely employed as a nematicide for control of all major species of nematodes throughout the United States, as has litchi tomato as a trap crop

[13] Skantar, et al., Morphological and Molecular Identification of *Globodera pallida* Associated with Potato in Idaho. *Journal of Nematology,* 2007 Jun; 39(2): 133–144. *http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2586493/.* In addition, a diagnostic protocol for *Globodera rostochiensis* and *Globodera pallida* (PM 7/40 (4)) was approved as an European Plant Protection Organization Standard in 2003 and last revised in 2017: *https://onlinelibrary.wiley.com/doi/full/10.1111/epp.12391.*

[14] To view the manual on *regulations.gov,* see footnote 1.

[15] See Evans. K., et al., Mapping Infestations of Potato Cyst Nematodes and the Potential for Spatially Varying Applications of Nematicides. *Precision Agriculture* 4 (2003) 149–162.

[16] Golden Nematode Program Manual (2006): 2–3–7. To view the manual on *regulations.gov*, see footnote 1.

in other countries. Trap crops, which have been used for decades to control nematodes, can be effective in reducing yield loss in potatoes and other crops when used as part of a crop rotation, or in conjunction with the use of nematicides.[17]

Host crops may be grown consecutively or in a crop rotation. A field is eligible for full deregulation if no viable cysts are detected after each of three host crops are harvested.[18] The scientific rationale for requiring three crops is to allow multiplication and detection of any low-level PCN populations prior to release.

Viability Testing, Staining, and Bioassays

In the Infested Field Deregulation Protocol, initial cyst viability is assessed using a live/dead staining assay. The staining assay to determine viability is a standard procedure in nematology as it allows for clearer visual identification of the organism. To evaluate the efficacy of a treatment for cyst nematode control, determining if a nematode is dead or alive is important. The lack of movement of a nematode does not signify death in species like *Heterodera* spp. (cyst nematodes).[19] Since the egg is protected in a resistant structure, living (viable) and dead (nonviable) eggs cannot be distinguished by direct observation. Various dyes and stains have been used to visualize and then ascertain viability of nematode eggs.

To become deregulated, a field must complete a series of tests to demonstrate that the infestation has been fully eradicated. In classical nematology, the standard method to determine PCN viability is based on a staining assay, using Meldola's blue dye (MB) followed by microscopic visualization of MB-treated nematodes. Nematode staining techniques are widely accepted by the majority of nematology laboratories and have been for decades.[20] One study presents a novel hatching bioassay technique developed for golden nematode, in which the authors illustrated the feasibility and advantages of a hatching bioassay system using staining and fluorescence microscopy. Another study[21] published in 1996 discusses the results of PCN infectivity assays using staining techniques similar to those we prescribe in the deregulation protocol. We also note that the 1968 USDA Golden Nematode Program Manual includes viability testing to monitor efficacy of chemical treatments.

As part of the infested field protocol, we also assess cyst viability using a greenhouse bioassay method (equivalent to three consecutive susceptible potato crops) or an in-field bioassay method (three consecutive crops grown in infestation foci or over the entire field). Greenhouse and field bioassays are used throughout the world to evaluate pest viability and other biological characteristics.[22]

Associated Field Deregulation Protocol (if Remaining in Host Crop Production)

The primary determination for a field to become regulated as an associated field is exposure of that field to soil or other regulated articles from an infested field. Pressure washing sanitation requirements, explained above, are implemented for all equipment in contact with field soil. These requirements are necessary to mitigate the potential spread of PCN from associated fields that are considered high risk for PCN infestation. Other regulatory requirements are implemented for movement of commodities and articles from the field that cannot be sanitized. For PCN, a full-field delimiting survey at a sampling rate of 8,000 cc of soil per acre (equivalent to approximately 20 pounds of soil per acre) is used to determine its presence in associated fields. A series of two negative delimiting surveys, each following harvest of two host crops grown on the field, is required to deregulate an associated field. The current deregulation protocol was adopted by APHIS in 2012 at the request of cooperators and stakeholders that were impacted, including the Idaho State Department of Agriculture, Idaho Potato Commission, and owners and operators of infested and associated fields.

Delimiting surveys are a common practice that have been included in APHIS emergency response manuals and used by several APHIS, State, and international programs. For example, a Japanese Beetle Harmonization plan, adopted by the National Plant Board in 1998, uses the same concept as the PCN deregulation protocol of conducting detection surveys followed by a more robust delimiting survey. This Japanese beetle harmonization plan was implemented by the Idaho State Department of Agriculture in Boise, Idaho in 2013 after detection of the beetle in 2012.[23]

Deregulation Protocol for Agricultural Land No Longer in Host Crop Production and Non-Agricultural Land

A deregulation option exists for regulated fields where agriculture still occurs but where all host crop production was prohibited or has ceased for a minimum of 30 years. This could include infested or associated status fields. During the 30-year time period, the fields may have been used for various purposes, including but not limited to hobby farms, fallow fields, forage crops, grain fields, nurseries, or pasture. PCN can remain viable for approximately 30 years in the absence of a host crop.[24]

To become deregulated, fields no longer in host crop production must complete a two-step process. Records must be made available to APHIS to demonstrate that the land has been out of host crop production for the last 30 years. APHIS then surveys the entire field at a rate of 8,000 cc soil per acre (equivalent to approximately 20 pounds of soil per acre). This dual approach establishes a 30-year period in which the field is out of host production, making it much less likely that PCN is present, and in the present establishes whether any viable PCN remains.

A deregulation option also exists for regulated fields that have been converted to non-agricultural uses. This could include infested or associated status fields. Examples of non-agricultural uses include such things as highways and other paved roads and commercial, industrial or residential development.

To become deregulated, fields converted to non-agricultural uses must have records available to determine the land has been out of agricultural use for

[17] See Sparkes, Jessica, Potential trap crops for the control of Potato Cyst Nematode (PCN). ADAS UK Ltd. 2013: *https://potatoes.ahdb.org.uk/sites/default/files/publication_upload/PCN%20trap%20crops%20review_for%20publication.pdf.*

[18] See Greco N., et al., The Effect of *Globodera Pallida* and *G. Rostochiensis* On Potato Yield. *Nematologica* 28.4: January 1982: *https://brill.com/view/journals/nema/28/4/article-p379_2.xml.*

[19] Shepherd, A.M. 1962. New blue R, a stain that differentiates between living and dead nematodes. *Nematologica* 8: 201–208.

[20] Perry, R. and Feil, J., Observations on a Novel Hatching Bioassay for *Globodera Rostochiensis* Using Fluorescence Microscopy. *Revue Nématologie* 9 (31): 280–282 (1986).

[21] Zanna, Muhammad, Diapause in the nematode *Globodera pallida. European Journal of Plant Pathology* 100: 413–423, 1994.

[22] See McKenzie, M.M. and S.J. Turner, Assessing reproduction of potato cyst nematodes (*Globodera rostochiensis* and *G. pallida*) on potato cultivars for National Listing. *EPPO Bulletin* 17:3: September 1987. *https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1365-2338.1987.tb00048.x.*

[23] See Idaho Japanese Beetle Project at *https://invasivespecies.idaho.gov/cooperative-agricultural-pest-surveys-caps.*

[24] Turner, Susan. Population decline of potato cyst nematodes *(Globodera rostochiensis, G. pallida)* in field soils in Northern Ireland. *Annals of Applied Biology,* October 1996: *https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1744-7348.1996.tb05754.x.*

at least the last 20 years and will not return to production, or construction for non-agricultural proposes has rendered the land non-tillable and is not likely to return to agricultural production. The risk of PCN spread and establishment from these non-agricultural fields is lower than those remaining in non-PCN host agricultural production, resulting in the lower number of years required for release. In the APHIS Karnal Bunt Program, which has been in place since 1996, a similar provision in the regulations [25] has been used successfully to lower or eliminate the risk of Karnal Bunt if the land cannot be farmed.

In order to give the public an opportunity to consider the science on which we have established the field protocols and the sources we have used to develop them, we are reopening the comment period on Docket No. APHIS–2018–0041 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Done in Washington, DC, this 21st day of May 2020.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–11792 Filed 6–4–20; 8:45 am]

BILLING CODE 3410–34–P

[25] See 7 CFR 301.89–3(f)(1).

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2019–BT–TP–0025]

RIN 1904–AE55

Energy Conservation Program: Test Procedure for Commercial Prerinse Spray Valves

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) is requesting information and data through this request for information (''RFI'') to consider whether to amend DOE's test procedures for commercial prerinse spray valves. Specifically, DOE seeks data and information pertinent to whether amended test procedures would (1) more accurately or fully comply with the requirement that the test procedure be reasonably designed to produce test results that measure water use during a representative average use cycle or period of use without being unduly burdensome to conduct, or (2) reduce test burden. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI), as well as the submission of data and other relevant information.

DATES: Written comments and information will be accepted on or before July 6, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2019–BT–TP–0025, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *CPSV2019TP0025@ee.doe.gov.* Include docket number EERE–2019–BT–TP–0025 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=69&action=viewcurrent.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kathryn McIntosh, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2002. Email: *Kathryn.McIntosh@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

DOE's test procedures for commercial prerinse spray valves are prescribed at Subpart O of 10 CFR part 431. The following sections discuss DOE's authority to establish and amend test procedures for commercial prerinse spray valves and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority and Background

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes commercial prerinse spray valves. EPCA provides for the definition of commercial prerinse spray valve at 42 U.S.C. 6291(33), the test procedure under 42 U.S.C. 6293(b)(14), and energy conservation standards (in terms of flow rate) under 42 U.S.C. 6295(dd).[3]

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d)).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s)).

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)).

If DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)).

EPCA requires DOE to use American Society of Testing and Materials (''ASTM'') Standard F2324 (''ASTM F2324'') as the basis for the test procedure for measuring flow rate. (42 U.S.C. 6293(b)(14)) EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered product, including commercial prerinse spray valves, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A)) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to water use of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedure. DOE is publishing this RFI to collect data and information to inform its decision in satisfaction of the seven-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A)).

B. Rulemaking History

DOE last amended the current test procedure for commercial prerinse spray valves on December 30, 2015, when DOE incorporated by reference the updated version of ASTM Standard F2324, *i.e.,* the 2013 version (''ASTM F2324–13''). 80 FR 81441 (''December 2015 CPSV Final Rule''). Prior to the December 2015 CPSV Final Rule, DOE had incorporated by reference the 2009 version of ASTM Standard F2324. In the December 2015 final rule, DOE also revised the definition of ''commercial prerinse spray valve,'' made minor changes to the DOE flow rate test method, and added a definition of ''spray force'' as well as a test method for measuring the spray force of commercial prerinse spray valves. On January 27, 2016, DOE published an energy conservation standards final rule that established three product classes based on spray force and established maximum flow rate requirements for each product class. 81 FR 4748, 4801.

In 2019, ASTM reaffirmed its 2013 standard (''ASTM F2324–13 (2019)'').

II. Request for Information

As an initial matter, DOE seeks comment on whether there have been changes in product testing methodology or new products on the market since the last test procedure update that may necessitate amendments to the test procedure for commercial prerinse spray valves. Specifically, DOE seeks data and information regarding whether the current test procedure produces results that are representative of an average use cycle for the product and is not unduly burdensome to conduct, and therefore does not need amendment.

In the following sections, DOE has also identified a variety of issues on which it seeks input to determine whether amended test procedures for commercial prerinse spray valves would more accurately or fully comply with the requirements in EPCA that test procedures: (1) Be reasonably designed to produce test results which reflect energy use during a representative average use cycle, and (2) not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)).

DOE also issued an RFI to seek more information on whether its test procedures are reasonably designed, as required by EPCA, to produce results that measure the energy (and water) use or efficiency of a product during a representative average use cycle or period of use. 84 FR 9721 (March 18, 2019). DOE seeks comment on this issue as it pertains to the test procedure for commercial prerinse spray valves.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this process. In particular, DOE notes that under Executive Order 13771, ''Reducing

[3] Because Congress included commercial prerinse spray valves in Part B of Title III of EPCA, the consumer product provisions of Part B (not the industrial equipment provisions of Part C) apply to commercial prerinse spray valves. However, because commercial prerinse spray valves are commonly considered to be commercial equipment, as a matter of administrative convenience and to minimize confusion among interested parties, DOE placed the requirements for commercial prerinse spray valves into subpart O of 10 CFR part 431. Part 431 contains DOE regulations for commercial and industrial equipment. DOE refers to commercial prerinse spray valves as either ''products'' or ''equipment.''

Regulation and Controlling Regulatory Costs,'' Executive Branch agencies, such as DOE, are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its regulations applicable to commercial prerinse spray valves consistent with the requirements of EPCA.

A. Scope and Definitions

EPCA initially defined a ''commercial prerinse spray valve'' as ''a handheld device designed and marketed for use with commercial dishwashing and ware washing equipment that sprays water on dishes, flatware, and other food service items for the purpose of removing food residue before cleaning the items.'' (42 U.S.C. 6291(33)(A)) EPCA authorizes DOE to modify the definition of commercial prerinse spray valves by rule to include products (1) that are used extensively in conjunction with commercial dishwashing and ware washing equipment, (2) to which the application of standards would result in significant energy savings, and (3) to which the application of standards would not be likely to result in the unavailability of any covered product type currently available on the market. (42 U.S.C. 6291(33)(B)(i)) EPCA also authorizes DOE to modify the commercial prerinse spray valve definition to exclude products (1) that are used for special food service applications, (2) that are unlikely to be widely used in conjunction with commercial dishwashing and ware washing equipment, and (3) to which the application of standards would not result in significant energy savings. (42 U.S.C. 6291(33)(B)(ii)) In the December 2015 CPSV Final Rule, DOE amended the definition of commercial prerinse spray valve to ''a handheld device that has a release-to-close valve and is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment.'' 10 CFR 431.262.

In determining whether a product is suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment, DOE considers various factors including channels of marketing and sales, product design and descriptions, and actual sales to determine whether the spray valve is used extensively in conjunction with commercial dishwashing and ware washing equipment. 81 FR 81441, 81444. For example, a product marketed or sold through outlets that market or sell to food service entities such as restaurants or commercial or institutional kitchens is more likely to be used as a commercial prerinse spray valve than one marketed or sold through outlets catering to pet care. Similarly, a product marketed outside of the United States as suitable for removing food residue from food service items before cleaning them in commercial dishwashing or ware washing equipment would be considered similarly suitable if distributed in the United States. DOE also considers how a product is marketed and sold to end-users, including how the product is identified and described in product catalogs, brochures, specification sheets, and communications with prospective purchasers. *Id.* Additionally, DOE considers actual sales, including whether the end-users are restaurants or commercial or institutional kitchens, even if those sales are indirect through an entity such as a distributor. *Id.*

Although manufacturers may market different categories of spray valves for various uses, such as cleaning floors or walls or filling glasses, any such device that is suitable for use in conjunction with commercial dishwashing and ware washing equipment to spray water for the purpose of removing food residue that is a handheld device that has a release-to-close valve is a commercial prerinse spray valve. See, 80 FR 35874, 35876–35877. Installation location is not a factor in determining whether a given model meets the definition of commercial prerinse spray valve. *Id.*

The CPSV definition generally does not include products that are commonly referred to as ''pot fillers.'' A pot filler would not be considered a commercial prerinse spray valve because it is not suitable to be used for rinsing dishware before washing in a commercial dishwasher. A pot filler is used to fill a container with water, whereas a commercial prerinse spray valve is used to remove food residue from dishware. Consumers generally would not install a pot filler to be used as a commercial prerinse spray valve. In addition, most pot fillers are usually rigidly mounted to a wall with a swing arm, and are thus not handheld devices. See, 80 FR 81444.

Issue 1: DOE requests comment on how manufacturers are currently applying the definition of ''commercial prerinse spray valve.''

Issue 2: DOE requests comments on whether modifications to the definition are needed to more appropriately include products (1) that are used extensively in conjunction with commercial dishwashing and ware washing equipment, (2) to which the application of standards would result in significant energy savings, and (3) to which the application of standards would not be likely to result in the unavailability of any covered product type currently available on the market. DOE also requests comments on whether the definition should be modified to more appropriately exclude products (1) that are used for special food service applications, (2) that are unlikely to be widely used in conjunction with commercial dishwashing and ware washing equipment, and (3) to which the application of standards would not result in significant energy savings. If modifications are needed, DOE requests comment on how commercial prerinse spray valve should be defined.

B. Test Procedure

1. Industry Standard

Currently, DOE's test procedure for commercial prerinse spray valves at 10 CFR part 431.263 incorporates by reference ASTM Standard F2324–13. The applicable sections of ASTM Standard F2324–13 are sections 6.1 through 6.9 (except 6.4 and 6.7), 9.1 through 9.4, and 10.1 through 10.2.5 for the flow rate test method with calculations conducted according to section 11.3.1; and sections 6.2 and 6.4 through 6.9, 9.1 through 9.5.3.2, and 10.3.1 through 10.3.8 for the spray force test method.

Since publication of the December 2015 final rule, ASTM F2324–13 has been reapproved to ASTM F2324–13 (2019). The 2019 version contains no changes from the 2013 version.

Issue 3: DOE requests comments on updating the CPSV test procedure references to incorporate the reaffirmed industry standard ASTM F2324–13 (2019), and confirmation that such an update would not result in any substantive changes to the current test procedure.

2. Water Pressure

As described previously, EPCA requires that any test procedures prescribed or amended by DOE be reasonably designed to produce test results which measure energy (and water) efficiency, energy (and water) use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) ASTM F2324–13 specifies testing with a water pressure of 60 ± 2 pounds per square inch (''psi''). In the December 2015 CPSV Final Rule, DOE concluded that 60 psi is representative of the water pressures

observed across the nation, based on review of water pressure data for commercial kitchens across the U.S. 80 FR 81441, 81446–81447.

Issue 4: DOE requests data and comment on whether the test pressure of 60 ± 2 psi continues to be representative of average U.S. water pressures in commercial kitchen settings.

C. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the existing test procedures for commercial prerinse spray valves. As noted previously, DOE recently issued an RFI to seek more information on whether its test procedures are reasonably designed, as required by EPCA, to produce results that measure the energy (and water) use or efficiency of a product during a representative average use cycle or period of use. 84 FR 9721 (Mar. 18, 2019). DOE seeks comment on this issue as it pertains to the test procedure for commercial prerinse spray valves.

DOE also requests comments on whether potential amendments based on the issues discussed would result in a test procedure that is unduly burdensome to conduct, particularly in light of any new equipment on the market since the last test procedure update. As discussed, the DOE test procedure incorporates specific provisions of the industry standard ASTM F2324–13. DOE also requests comment on the benefits and burdens of adopting any industry/voluntary consensus-based or other appropriate test procedure, without modification.

Additionally, DOE requests comment on whether the existing test procedures limit a manufacturer's ability to provide additional features to consumers on commercial prerinse spray valves. DOE particularly seeks information on how the test procedures could be amended to reduce the cost of new or additional features and make it more likely that such features are included on commercial prerinse spray valves, while still meeting the requirements of EPCA.

Finally, DOE also requests comments on any potential amendments to the existing test procedure that would address impacts on manufacturers, including small businesses.

III. Submission of Comments

DOE invites all interested parties to submit in writing by July 6, 2020, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended test procedures for commercial prerinse spray valves. These comments and information will aid in the development of a test procedure NOPR for commercial prerinse spray valves if DOE determines that amended test procedures may be appropriate for this equipment.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process

for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on May 8, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 8, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–11768 Filed 6–4–20; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

RIN 3133–AF11

Joint Ownership Share Accounts

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to amend its share insurance regulation governing the requirements for a share account to be separately insured as a joint account by the National Credit Union Share Insurance Fund (NCUSIF). Specifically, the proposed rule would provide an alternative method to satisfy the membership card or account signature card requirement necessary for insurance coverage (signature card requirement). Under the proposal, even if an insured credit union cannot produce membership cards or account signature cards signed by the joint accountholders, the signature card requirement could be satisfied by information contained in the account records of the insured credit union establishing co-ownership of the share account. For example, the signature card requirement could be satisfied by the credit union having issued a mechanism for accessing the account, such as a debit card, to each co-owner or evidence of usage of the joint share account by each co-owner.

DATES: Comments must be received on or before July 6, 2020.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF11, by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (703) 518–6319. Include ''[Your Name]—Comments on Proposed Rule: Joint Ownership Share Accounts'' in the transmittal.
- *Mail:* Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at *http://www.regulations.gov* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA's law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas I. Zells, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 548–2478.

SUPPLEMENTARY INFORMATION:

I. Background
II. Legal Authority
III. Summary of the Proposed Rule
IV. Regulatory Procedures

I. Background

The Board proposes to amend its share insurance regulation governing the requirements for a share account to be insured separately as a joint account.[1] Specifically, this proposal addresses the requirement for separate joint account insurance that each co-owner of a joint account has personally signed a membership card or account signature card. In the event a federally insured credit union (FICU) could not produce from its records such membership cards or account signature cards, this proposal would explicitly permit the use of other evidence contained in a FICU's account records to satisfy the signature card requirement. The proposal discusses examples of such evidence more fully in the sections that follow.

This amendment would mirror a change made by the Federal Deposit Insurance Corporation (FDIC) in 2019 for federally insured depository institutions.[2] This proposed rule is intended to facilitate the prompt payment of share insurance in the event of a FICU's failure by explicitly providing alternative methods that the NCUA could use to determine the owners of joint accounts, consistent with the NCUA's statutory authority. The Board emphasizes that this change is not in reaction to any observed current problem with respect to identifying qualifying joint accounts at credit unions and processing insurance payments timely. Rather, the Board is issuing this proposed rule because it is important to maintain parity between the nation's two federal deposit/share insurance programs and to provide credit union members with equal access to insurance coverage. These regulatory changes would promote further confidence in the credit union system and embody a forward-looking approach that would explicitly permit the use of new and innovative technologies and processes to meet the NCUA's policy objectives.

Under the Federal Credit Union Act (FCU Act), the NCUA is responsible for paying share insurance to any member, or to any person with funds lawfully held in a member account, in the event of a FICU's failure up to the standard maximum share insurance amount (SMSIA), which is currently set at $250,000.[3] The FCU Act states that the determination of the net amount of share insurance paid ''shall be in accordance with such regulations as the Board may prescribe'' and requires that,

[1] 12 CFR 745.8.

[2] 84 FR 35022 (July 22, 2019).

[3] 12 U.S.C. 1787(k)(1)(A), (6).

''in determining the amount payable to any member, there shall be added together all accounts in the credit union maintained by that member for that member's own benefit, either in the member's own name or in the names of others.'' [4] However, the FCU Act also specifically authorizes the Board to ''define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.'' [5]

The NCUA has implemented these requirements by issuing regulations recognizing particular categories of accounts, such as single ownership accounts and joint ownership accounts.[6] If an account meets the requirements for a particular category, the account is insured up to the $250,000 limit separately from shares held by the member in a different account category at the same FICU. For example, provided all requirements are met, shares in the single ownership category will be separately insured from shares in the joint ownership category held by the same member at the same FICU.

Section 745.8 of the NCUA's regulations governs insurance coverage for joint ownership accounts.[7] Joint ownership accounts include share accounts held pursuant to various forms of co-ownership under state law. For example, joint tenants could each hold an equal, undivided interest in a share account. Section 745.8 provides that only ''qualifying joint accounts'' are insured separately from individually owned share accounts maintained by the co-owners.[8] ''Qualifying joint accounts'' generally must satisfy two requirements: (1) Each co-owner has personally signed a membership card or account signature card; and (2) each co-owner possesses withdrawal rights on the same basis.[9] If a joint account is not a qualifying joint account, each co-owner's actual ownership interest in the account is considered individually owned and added to any other accounts individually owned by the co-owner and insured up to the SMSIA in the aggregate.[10] This may result in some uninsured shares if a member's single ownership accounts at the same FICU, including shares in any non-qualifying joint accounts, exceed $250,000.

Additionally, it is worth reiterating that, with limited exceptions, the FCU Act generally limits NCUA share insurance coverage to ''member accounts.'' [11] Despite this general limitation, the FCU Act [12] and the NCUA's regulations [13] do allow a nonmember to become a joint owner with a member on a joint account with right of survivorship. The regulations provide that a nonmember's interest in such accounts will be insured in the same manner as the member joint-owner's interest.

The signature requirement has been included in the regulation governing insurance coverage since its inception in 1971.[14] The FDIC has had a substantially similar signature requirement since 1967.[15] In originally adopting this requirement, the FDIC ''intended to address practices such as the addition of nominal co-owners to an account solely to increase deposit insurance coverage.'' [16] The NCUA thereafter adopted a substantially similar requirement [17] and views it as a reliable indicator of account ownership and important to ensuring consistency with the FCU Act, which expressly limits the net amount of share insurance payable to any member, or person with funds lawfully held in a member account, based on the member account classifications prescribed by the Board.[18]

Neither the FCU Act nor the NCUA's regulations define the terms ''membership card'' or ''account signature card.'' In implementing § 745.8, the NCUA has not required any particular format for a membership card or account signature card. Therefore, the agency has previously permitted FICUs to satisfy the requirement through various forms of documentation used in their account opening processes. The Board also wishes to reiterate that, consistent with the Electronic Signatures in Global and National Commerce Act (E-Sign Act),[19] the signature requirement may be satisfied electronically. This has been the NCUA's long-standing position.

II. Legal Authority

The Board has issued this proposed rule pursuant to its authority under the FCU Act. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the Federal supervisory authority for FICUs.[20] The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[21] Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.[22] Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[23] Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

III. Summary of the Proposed Rule

The Board is proposing to amend § 745.8 to explicitly provide for an alternative method to satisfy the signature card requirement. The proposed rule would specifically allow the signature card requirement to be satisfied by information contained in the account records of the FICU establishing the co-ownership of the share account, such as evidence that the FICU has issued a mechanism for accessing the account to each co-owner or evidence of usage of the share account by each co-owner. For example, under this proposal, the requirement could be satisfied by evidence that a FICU has issued a debit card to each co-owner of the account or evidence that each co-owner of the account has conducted transactions using the share account. These examples, however, are not intended to define the only forms of evidence of co-ownership that could satisfy the signature requirement. To the contrary, the evidence found in a FICU's account records could take many other forms.

The proposed rule only would affect a requirement in the NCUA's regulations that must be satisfied for a share account to be separately insured as a joint account; it would not affect any other legal requirements applicable to FICUs. FICUs may, for legal or other reasons, find it appropriate or necessary

[4] 12 U.S.C. 1787(k)(1)(B).

[5] 12 U.S.C. 1787(k)(1)(C).

[6] 12 CFR part 745.

[7] 12 CFR 745.8.

[8] *Id.*

[9] 12 CFR 745.8(c).

[10] 12 CFR 745.8(d).

[11] 12 U.S.C. 1752(5).

[12] 12 U.S.C. 1759(a).

[13] 12 CFR 745.8(e).

[14] 36 FR 2477 (Feb. 5, 1971).

[15] *See* 32 FR 10408, 10409 (July 14, 1967).

[16] 84 FR 35022, 35023 (July 22, 2019).

[17] The FCU Act generally requires that the NCUA determine ''the net amount of share insurance payable . . . in accordance with this paragraph, and *consistently with actions taken by the Federal Deposit Insurance Corporation* under section 1821(a) of this title.'' 12 U.S.C. 1787(k)(1)(A) (emphasis added).

[18] 12 U.S.C. 1787(k)(1).

[19] Public Law 106–229, codified at 15 U.S.C. 7001(a).

[20] 12 U.S.C. 1752–1775.

[21] 12 U.S.C. 1766(a).

[22] 12 U.S.C. 1787(b)(1).

[23] 12 U.S.C. 1789(a)(11).

to continue collecting customers' signatures.[24] The changes made by the proposed rule would not modify or affect any state law requirements generally applicable to FICUs.

The proposal also would not affect the general principles contained in § 745.2 of the NCUA's share insurance regulations applicable in determining insurance of accounts.[25] These general principles applicable in determining insurance of accounts would continue to apply to all share accounts, including joint ownership accounts.

The proposed rule would not introduce any new requirements for an account to be insured as a joint account, and would not reduce or affect insurance coverage for any account for which the existing joint account requirements are satisfied. The proposed rule simply would provide an alternative method to satisfy the existing signature card requirement. If each co-owner of a joint account signs, or has previously signed, a membership card or account signature card in accordance with the existing requirement and the FICU can produce it, then the proposed alternative method would be unnecessary. Assuming that the remaining qualifying joint account requirement is satisfied—that is, both co-owners possess equal withdrawal rights—and all other membership requirements are met,[26] the account would be insured as a joint account. The proposal would apply to all FICUs and would not impose any increased burden or new recordkeeping requirements for joint accounts.

The rule also provides non-quantifiable benefits to owners of joint accounts. By explicitly providing alternative methods that the NCUA could use to determine the owners of joint accounts, the proposed rule would further support a prompt share insurance determination in the event of a FICU's failure, alleviating delays in the recognition of account ownership and uncertainty regarding the extent of share insurance coverage. These benefits would promote confidence in the credit union system and NCUA-insured shares.

The NCUA invites comments on all aspects of the proposal.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include FICUs with assets less than $100 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. The proposed rule explicitly allows the NCUA to look to information contained in the account records of a FICU in order to satisfy the signature card requirement at the time of a FICU's failure. As a result, it will not cause any increased burden on FICUs and will not have an impact on small credit unions. Accordingly, the NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates a new or amends existing information collection requirements.[27] For the purpose of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The proposed rule does not contain information collection requirements that require approval by OMB under the PRA.[28] The proposed rule will merely allow the NCUA to look to information contained in the account records of a FICU in order to satisfy the signature card requirement at the time of a FICU's failure.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[29]

List of Subjects in 12 CFR Part 745

Credit, Credit unions, Share insurance.

By the National Credit Union Administration Board on May 21, 2020.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board proposes to amend 12 CFR part 745 as follows:

PART 745—SHARE INSURANCE AND APPENDIX

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; title V, Pub. L. 109–351; 120 Stat. 1966.

■ 2. Revise § 745.8(c) to read as follows:

§ 745.8 Joint ownership accounts.

* * * * *

(c) *Qualifying joint accounts.* (1) A joint account is a qualifying joint account if each of the co-owners has personally signed a membership or account signature card and has a right of withdrawal on the same basis as the other co-owners. The signature requirement does not apply to share certificates, or to any accounts maintained by an agent, nominee, guardian, custodian or conservator on behalf of two or more persons if the records of the credit union properly reflect that the account is so maintained.

(2) The signature card requirement of paragraph (c)(1) of this section also may be satisfied by information contained in the account records of the federally insured credit union establishing co-ownership of the share account, such as evidence that the institution has issued a mechanism for accessing the account

[24] *See, e.g.,* 12 CFR part 701, appendix A and corresponding state law requirements for federally insured, state-chartered credit unions.

[25] 12 CFR 745.2.

[26] With limited exceptions, the FCU Act generally limits NCUA share insurance coverage to ''member accounts.'' 12 U.S.C. 1752(5). Despite this general limitation, the FCU Act and the NCUA's regulations do allow a nonmember to become a joint owner with a member on a joint account with right of survivorship. 12 U.S.C. 1759(a). The regulations provide that a nonmember's interest in such accounts will be insured in the same manner as the member joint owner's interest. 12 CFR 745.8(e).

[27] 44 U.S.C. 3507(d); 5 CFR part 1320.

[28] 44 U.S.C. Chap. 35.

[29] Public Law 105–277, 112 Stat. 2681 (1998).

to each co-owner or evidence of usage of the share account by each co-owner.

* * * * *

[FR Doc. 2020–11385 Filed 6–4–20; 8:45 am]

BILLING CODE 7535–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 317

Prohibition of Energy Market Manipulation Rule

AGENCY: Federal Trade Commission.

ACTION: Regulatory review; request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') seeks public comment on the overall costs, benefits, and regulatory and economic impact of its rule prohibiting fraud or deceit in wholesale petroleum markets, and omissions of material information that are likely to distort petroleum markets, as part of the Commission's systematic review of all current FTC rules and guides.

DATES: Comments must be received on or before September 3, 2020.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section. Write ''Energy Market Manipulation Rule, 16 CFR part 317, Project No. P082900'' on your comment, and file your comment online through *https://www.regulations.gov,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Peter Richman (202–326–2563), Assistant Director, Mergers III, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Prohibition of Energy Market Manipulation Rule (''Energy Market Manipulation Rule'' or ''Rule''), authorized by the Energy Independence and Security Act of 2007 (''EISA'') (42 U.S.C. 17301–17305), prohibits market manipulation in connection with the purchase or sale of crude oil or petroleum products. The Rule, initially promulgated by the Commission on November 4, 2009, prohibits fraudulent or deceptive conduct (including making false or misleading statements of material fact) in connection with wholesale purchases or sales of crude oil, gasoline, or petroleum distillates. The Rule separately bans the intentional failure to state a material fact when the omission (1) makes the statement misleading and (2) distorts or is likely to distort market conditions for any product covered by the Rule. The Commission formally adopted the Rule on November 4, 2009.

II. Regulatory Review Program

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry avoid deceptive claims. These reviews assist the Commission in identifying rules and guides that warrant modification or rescission.

With this document, the Commission initiates its review of the Energy Market Manipulation Rule. The Commission solicits comments on, among other things, the economic impact of, and the continuing need for, the Rule, the Rule's benefits to consumers, and the burdens it places on industry members subject to the Rule's requirements, including small businesses.

III. Issues for Comments

To aid commenters in submitting information, the Commission has prepared the following specific questions related to the Energy Market Manipulation Rule. The Commission seeks comments on these and any other issues related to the Rule's current requirements. In their replies, commenters should provide any available evidence and data that supports their positions, such as empirical data, consumer perception studies, and consumer complaints.

(1) *Need:* Is there a continuing need for the Rule? Why or why not?

(2) *Benefits and Costs to Consumers:* What benefits has the Rule provided to consumers, and does the Rule impose any significant costs on consumers?

(3) *Benefits and Costs to Industry Members:* What benefits, if any, has the Rule provided to businesses, and does the Rule impose any significant costs, including costs of compliance, on businesses, including small businesses?

(4) *Changes:*

a. What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? How would these modifications affect the costs and benefits of the Rule for consumers? How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

b. Is there evidence of acts or practices in connection with the purchase or sale of wholesale petroleum that violate the antitrust or consumer protection laws and that fall within the statutory prohibition of ''any manipulative or deceptive device or contrivance,'' but which § 317.3 does not reach?

c. The Rule defines ''knowingly'' to mean ''that the person knew or must have known that his or her conduct was fraudulent or deceptive.'' 16 CFR 317.2(c).

i. Has this definition prevented the Commission's Rule from addressing behavior that is within the meaning of 42 U.S.C. 17301?

ii. Specifically, would changing the definition of knowingly to capture acts, practices, or courses of business that a person ''knew or *should* have known'' was fraudulent or deceptive, or changing the definition in some other manner that tracks the statutory language, enhance the Commission's ability to address behavior in wholesale petroleum markets that is within the meaning of 42 U.S.C. 17301? Commenters should address any costs and benefits to wholesale petroleum markets and industry participants from modifying the definition.

(5) *Impact on Information:* What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

(6) *Compliance:* Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(7) *Unnecessary Provisions:* Provide any evidence concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.

(8) *Technological or Economic Changes:* What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions? How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(9) *Conflicts with Other Requirements:* Does the Rule overlap or conflict with

other federal, state, or local laws or regulations? If so, how? Provide any evidence that supports your position. With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

IX. Comment Submissions

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before September 3, 2020. Write ''Energy Market Manipulation Rule, 16 CFR part 317, Project No. P082900)'' on your comment. Because of the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comment online through the *https://www.regulations.gov* website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form provided by *regulations.gov.* Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Energy Market Manipulation Rule, 16 CFR part 317, Project No. P082900'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this request for comment and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 3, 2020. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2020–10988 Filed 6–4–20; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 24 and 111

[Docket No. USCBP–2020–0010]

RIN 1515–AE43

Elimination of Customs Broker District Permit Fee

AGENCY: U.S. Customs and Border Protection, DHS; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to eliminate customs broker district permit fees. Concurrently with this document, CBP is publishing a notice of proposed rulemaking to, among other things, eliminate customs broker districts (*see* ''Modernization of the Customs Brokers Regulations'' RIN 1651–AB16). Specifically, CBP proposes to transition all brokers to national permits and to expand the scope of the national permit authority to allow national permit holders to conduct any type of customs business throughout the customs territory of the United States. By transitioning to a national permit, CBP also proposes to eliminate the requirements for brokers to maintain district permits. As a result, CBP proposes the conforming amendments discussed in this document to eliminate customs broker district permit fees.

DATES: Comments must be received on or before August 4, 2020.

ADDRESSES: You may submit comments, identified by *docket number,* by *one* of the following methods:

- Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments via Docket No. USCBP–2020–0010.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the

SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Ms. Cammy Canedo at (202) 325–0439.

FOR FURTHER INFORMATION CONTACT: Melba Hubbard, Chief, Broker Management Branch, (202) 863–6986, *melba.hubbard@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that individuals and business entities must hold a valid customs broker's license and permit to transact customs business on behalf of others. The statute also sets forth standards for the issuance of broker licenses and permits; provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties; and provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect the public and the revenue of the United States and to carry out the provisions of section 641.

The regulations issued under the authority of section 641 are set forth in Part 111 of title 19 of the Code of Federal Regulations (CFR) (19 CFR part 111) and provide for, among other things, fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

The current customs brokers regulations are based on a district system in which ports within a district handle entry, entry summary, and post-summary activity and for which a broker district permit is required.

Discussion of Proposed Amendments

In a concurrent notice of proposed rulemaking, published elsewhere in this issue of the **Federal Register** (*see* ''Modernization of the Customs Brokers Regulations'' RIN 1651–AB16), CBP proposes to amend the CBP regulations by modernizing the customs brokers regulations to coincide with the development of CBP trade initiatives including the Automated Commercial Environment (ACE) and the Centers of Excellence and Expertise (Centers). Specifically, CBP is proposing to transition all brokers to national permits and to expand the scope of the national permit authority to allow national permit holders to conduct any type of customs business throughout the customs territory of the United States. To accomplish this, CBP proposes to eliminate broker districts and district permits, which also eliminates the need for district permit waivers and for brokers to maintain district offices. This document proposes conforming amendments to Parts 24 and 111 to eliminate customs broker district permit fees.

Part 24

Part 24 of title 19 of the CFR (19 CFR part 24) sets forth the regulations regarding customs financial and accounting procedures. Section 24.22 describes the customs Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees and limitations for certain services. Specifically, paragraph (h) of section 24.22 describes the customs broker permit user fee. CBP proposes conforming amendments to sections 24.22(h) and (i)(9) to eliminate the customs broker district permit fee.

Part 111

Elimination of District Permits

Section 111.19 provides the procedures for obtaining broker permits, responsible supervision and control requirements for permits, and review procedures for the denial of a permit. As further described in the concurrent notice of proposed rulemaking, published elsewhere in this issue of the **Federal Register**, CBP is proposing to eliminate district permits and move to a national permit-only system (*see* ''Modernization of the Customs Brokers Regulations'' RIN 1651–AB16).

Section 111.19(c) describes permit fees. As CBP is proposing to eliminate district permits in a concurrent notice of proposed rulemaking, this document proposes conforming amendments to this section by eliminating fees for district permits. In addition, CBP proposes removing the specific permit application and permit user fee amounts and replacing the numerical figures with a reference to the relevant fee provision in sections 111.96(b) and (c). The proposed changes to section 111.96(b) can be found in the concurrent notice of proposed rulemaking.

Elimination of District Permit Fees

Section 111.96 describes fees required throughout part 111. Paragraph (c) of section 111.96 describes the permit user fee. To reflect the proposed elimination of district permits, CBP proposes to eliminate the customs broker district permit fee. CBP also proposes to specify that the user fee is for national permits issued under section 111.19(a).

As discussed in the concurrent proposal ''Modernization of the Customs Brokers Regulations'' RIN 1651–AB16, CBP published an interim final rule that transferred certain trade functions from the port director to the Center director. Similarly, certain broker management functions previously performed by the port director will be transferred to the Centers as part of this proposed rule. CBP proposes to revise the last sentence of paragraph (c) by splitting it into two sentences, with the second sentence providing that the director of the designated Center will notify the broker in writing of the failure to pay and the revocation of the permit.

Other Conforming Amendments

The authority for part 111 currently provides a specific authority citation for section 111.3. When the text of section 111.3 was transferred to section 111.2 in a final rule published in the **Federal Register** (65 FR 13880) on March 15, 2000, CBP inadvertently did not revise the specific authority citation for either section. CBP proposes to correct this by revising the specific authority citation for section 111.2 by adding that this section is also issued under 19 U.S.C. 1484 and 4798, and by removing the specific authority citation for section 111.3. An identical amendment is proposed in the concurrent document, ''Modernization of the Customs Brokers Regulations'' RIN 1651–AB16.

Executive Orders 13563, 12866, and 13771

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

This rule is not a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017). However, this rule is considered a deregulatory action under Executive Order 13771 and the estimated annualized savings to the public are $481,089. CBP has prepared the following analysis to help inform stakeholders of the impacts of this proposed rule.

1. Need and Purpose of Rule

The current customs brokers regulations are based on the district system in which entry, entry summary, and post-summary activity are all handled by the ports within a permit district. In the rule published concurrently (RIN 1651–AB16) with this proposed rule, CBP proposes to modernize the regulations governing customs brokers to better reflect the current work environment and streamline the customs broker permitting process to save money.

2. Background

The customs territory of the United States is divided into seven customs regions. Within each region, the customs territory of the United States is further divided into districts; there are currently 40 customs districts.[1] Currently, a district permit is required for each district in which a customs broker intends to conduct customs business. Each district permit requires a one-time permit fee of $100 and an annual user fee of $141.70. A customs broker has the option of receiving his/her first district permit concurrently with the receipt of the customs broker license in which case the $100 permit fee is waived. In an effort to modernize the permitting process for customs brokers, the proposed rule published concurrently in the FR (RIN 1651–AB16) will eliminate the district permitting process and automatically grant each district permit holder a national permit.

3. Proposed Rule Amendments: Costs and Benefits

Concurrently with this document, CBP is publishing a notice of proposed rulemaking that eliminates customs broker districts (*see* ''Modernization of the Customs Brokers Regulations'' RIN 1651–AB16). CBP proposes to transition all brokers to national permits and to expand the scope of the national permit authority to allow national permit holders to conduct any type of customs business throughout the customs territory of the United States. By transitioning to a national permit, CBP proposes to eliminate the requirements for brokers to maintain district permits and pay the annual user fee. Consequently CBP proposes to eliminate customs broker district permit annual user fees. CBP has prepared the following analysis to help inform stakeholders of the impacts of this proposed rule.

3.1 Permit User Fee

Currently, the payment of an annual permit user fee of $141.70 is required for each permit that is granted to an individual, partnership, association, or corporate broker. The permit user fee is payable for each district and/or national permit a customs broker has, including when a district permit is issued concurrently with the broker's license. As a result of the concurrent CBP rule, district permits will be eliminated and customs brokers will only need to pay an annual user fee on a single national permit.[2]

According to data from CBP's Broker Management Branch, as of January 2017 there were 2,093[3] brokers holding one or more district permits[4] that have 3,067 active district permits. This is an average of approximately 1.5 district permits per customs broker permit holder. Using this figure we can now project how many district permits brokers who currently hold at least one permit, would have had over the period of the analysis, from 2017 through 2021 under the baseline condition (*i.e.,* if this rule is not promulgated). This is shown in Exhibit 1 below.

EXHIBIT 1—PROJECTION OF NEW INDIVIDUAL AND CORPORATE PERMITS

Year	New individual licenses issued	New individual permits	New corporate licenses issues	New corporate permits
2017	762	1,143	97	146
2018	839	1,258	106	159
2019	922	1,384	115	173
2020	1,015	1,522	126	188
2021	1,116	1,674	137	205

[1] In addition to the 40 geographically defined customs districts, there are three special districts that are responsible for specific types of imported merchandise. These special districts include districts 60, 70 and 80. District 60 refers to entries made by vessels under their own power. District 70 refers to shipments with a value under $800. District 80 refers to mail shipments. These three special districts do not require the use of a licensed broker with a specific district permit and as a result are not affected by this proposal.

[2] The reduction of the fee revenue will result in less funds available for CBP operations, but this is offset by the reduction in costs to process the permits. Thus, there is no net effect to CBP in reducing this revenue.

[3] This figure represents all current licensed brokers that are permit holders, regardless of what year they received their license and is inclusive of the 1,258 brokers that hold at least one district permit concurrently with a national permit.

[4] Note that 11,531 brokers (13,624 active broker licenses − 2,093 customs broker permit holders) do not have any permits at all, and as a result, will not be affected by the permitting changes of this rule.

EXHIBIT 1—PROJECTION OF NEW INDIVIDUAL AND CORPORATE PERMITS—Continued

Year	New individual licenses issued	New individual permits	New corporate licenses issues	New corporate permits
Total	4,654	6,981	581	871

Note: Values may not sum to total due to rounding.

Absent this rule, there would be 4,654 new individual licenses and 581 new corporate licenses issued for a total of 5,235 licenses (*see* Exhibit 1). Using the aforementioned ratio of district permits to customs broker permit holders of 1.5 district permits to 1 customs broker permit holder, these 5,235 broker licenses would result in 7,853 district permits. According to CBP's Broker Management Branch, in addition to the 7,853 district permits that would be granted over the period of analysis, approximately 150 national permits are issued annually. This means that over the period of analysis from 2017 through 2021, 750 national permits will be granted to customs brokers in addition to the 7,853 district permits for a total of 8,603 permits. Absent this rule, these 8,603 permits would result in permit user fee charges of $1,219,045 (8,603 total permits * $141.70 annual permit user fee) over the period of the analysis. With this rule in place, the 5,235 total brokers would only receive a single national permit each for a total of 5,235 permits. This would result in permit user fee charges over the period of analysis of $741,800 (5,235 national permits * $141.70 annual permit user fee). This represents total savings to new customs brokers of $477,245 ($1,219,045 − $741,800) over the period of analysis. Please see Exhibit 2, below, for the estimated annual cost savings.

EXHIBIT 2—COST SAVINGS FROM THE PERMIT USER FEE FOR NEW LICENSES

[$2016]

Year	New licenses issued	New district permits	New national permits	Total permits	Savings as a result of this proposed rule
2017	859	1,289	150	1,439	$82,186
2018	945	1,418	150	1,568	88,279
2019	1,037	1,556	150	1,706	94,797
2020	1,141	1,712	150	1,862	102,166
2021	1,253	1,880	150	2,030	110,101
Total	5,235	7,853	750	8,603	477,245

Note: Values may not sum to total due to rounding.

Current brokers that have more than one permit will also benefit from this rule. According to CBP's Broker Management Branch, as of January 2017 there were 1,319 brokers that either have more than one district permit or a combination of at least one district permit and a national permit. These 1,319 brokers currently hold a total of 3,613 permits which results in a ratio of 2.73 permits per broker (some of the existing brokers hold significantly more than the average of 1.5 permits per customs broker permit holder). Absent this rule, these permits would result in an annual permit user fee charge in 2017 of $511,962 (3,613 permits * $141.70 annual permit user fee) or $2,559,810 over the period of analysis from 2017 through 2021. As a result of this rule, the 1,319 brokers would only need to hold a single national permit for a total of 1,319 permits. This would result in an annual permit user fee charge in 2017 of $186,902 (1,319 national permits * $141.70 annual permit user fee) or $934,510 over the period of analysis. This represents an annual savings in 2017 of $325,060 ($511,962 − $186,902) or $1,956,192 over the period of analysis to customs brokers who currently hold more than one permit. This also represents a decrease in the transfer payment from customs brokers to the government of $1,956,192 over the period of analysis from 2017 through 2021. Please see Exhibit 3, below, for the estimated annual cost savings for existing license holders.

EXHIBIT 3—COST SAVINGS FROM THE PERMIT USER FEE FOR EXISTING LICENSES OVER PERIOD OF ANALYSIS

[$2016]

Year	Existing licenses [5]	Number of permits absent rule	Number of permits with rule	Cost absent rule ($)	Cost with rule ($)	Annual cost savings over period of analysis ($)
2017	1,319	3,613	1,319	511,962	186,902	325,060
2018	1,444	3,943	1,444	558,716	204,658	354,058
2019	1,582	4,318	1,582	611,794	224,101	387,694

[5] A growth rate of 9.5 percent was used to project the number of existing licenses over the period of analysis. The 9.5 percent figure is the average of the ten (10) percent calculated average growth rate for individual licenses and the nine (9) percent calculated average growth rate for corporate licenses that was used in the analysis.

EXHIBIT 3—COST SAVINGS FROM THE PERMIT USER FEE FOR EXISTING LICENSES OVER PERIOD OF ANALYSIS—Continued

[$2016]

Year	Existing licenses[5]	Number of permits absent rule	Number of permits with rule	Cost absent rule ($)	Cost with rule ($)	Annual cost savings over period of analysis ($)
2020	1,732	4,728	1,732	669,915	245,390	424,525
2021	1,896	5,177	1,896	733,557	268,702	464,855
Total				3,085,945	1,129,753	1,956,192

Note: Values may not sum to total due to rounding.

3.2 Total Costs

The elimination of the annual user fee for district permits does not result in any costs to brokers, but as noted above the rule yields the aforementioned cost savings.

3.3 Total Benefits

The total annual monetized cost savings for customs brokers are the result of monetary savings from switching from a district permitting system to a national permitting system. Specifically, the cost savings are the result of the payment of the annual permit user fee for only a single national permit instead of for each of the potentially several district permits a broker holds. As shown in Exhibit 4 below, total savings over the period of analysis are approximately $2.4 million dollars.

EXHIBIT 4—TOTAL ANNUAL UNDISCOUNTED SAVINGS FOR BROKERS ($2016), 2017–2021

Year	Total savings
2017	$407,246
2018	442,337
2019	482,491
2020	526,691
2021	574,956
Total	2,433,721

Note: Values may not sum to total due to rounding.

Exhibit 5 shows the total and annualized savings over the period of analysis (2017–2021) at a three (3) and seven (7) percent discount rate, per guidance provided in OMB Circular A–4. Total benefits range from approximately $2.1 to $2.3 million over the period of analysis. Annualized benefits are approximately $480,000.

EXHIBIT 5—TOTAL PRESENT VALUE AND ANNUALIZED BENEFITS, FROM 2017–2021

[$2016]

Total present value benefits		Annualized benefits	
3%	7%	3%	7%
$2,284,331	$2,110,639	$484,266	$481,089

3.4 Net Benefits

Exhibit 6 summarizes the monetized costs and benefits of this rule to individual and business entity customs brokers. As shown, the total monetized present value net benefit of this rule over a 5-year period of analysis from 2017–2021 ranges from approximately $2.3 to $2.4 million and the annualized net benefit is approximately $500,000. In 2017, we estimate that 859 brokers will receive their broker licenses (762 individual licenses plus 97 corporate licenses). The adoption of this rule will result in an average annual net benefit per broker in 2017 of $560 ($481,089 annualized net benefit/859 total new brokers for 2017).

EXHIBIT 6—PRESENT VALUE AND ANNUALIZED NET BENEFIT OF RULE ($2016), 2017–2021

	3% Discount rate		7% Discount rate	
	Present value	Annualized	Present value	Annualized
Total Cost	$0	$0	$0	$0
Total Benefit	2,284,331	484,266	2,110,639	481,089
Total Net Benefit	2,284,331	484,266	2,110,639	481,089

4. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small

governmental jurisdiction (locality with fewer than 50,000 people).

The proposed rule will apply to all customs brokers, regardless of size. Accordingly, the proposed rule will affect a substantial number of small entities. However, as stated above in the Executive Orders 13563, 12866, and 13771 section, the proposed rule will result in an average savings per customs broker of a discounted present value of $560. Since brokers, on average, will benefit as a result of this rule, and the savings are relatively small on a per broker basis, it will not have a significant impact on customs brokers. Accordingly, CBP certifies that this rule does not have a significant impact on a substantial number of small entities.

5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information contained in these regulations are provided for by OMB control number 1651–0034 (CBP Regulations Pertaining to Customs Brokers) and by OMB control number 1651–0076 (Recordkeeping Requirements). This rule does not change the burden under these information collections.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the Secretary of the Treasury's authority (or that of his delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Harbors, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, parts 24 and 111 of title 19 of the Code of Federal Regulations (19 CFR parts 24 and 111) are proposed to be amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The general authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

§ 24.22 [Amended]

■ 2. In § 24.22:

■ a. Paragraph (h) is amended by:

■ i. Removing the phrase ''each district permit and for'' in the first sentence;

■ ii. Removing the second sentence; and

■ iii. Removing the word ''port'' from the third sentence and adding in its place the words ''designated Center''; and

■ b. Paragraph (i)(9) is amended by removing the phrase '': for district permits, class code 497;'' from the first sentence.

PART 111—CUSTOMS BROKERS

■ 3. The authority citation for part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624; 1641.

Section 111.2 also issued under 19 U.S.C. 1484, 1498;

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

■ 4. In § 111.19, revise the section heading and paragraph (c) to read as follows:

§ 111.19 National permit.

* * * * *

(c) *Fees.* A national permit issued under paragraph (a) of this section is subject to the permit application fee specified in § 111.96(b) and to the customs user permit fee specified in

§ 111.96 (c). The fees must be paid at the designated Center (*see* § 111.1) or online with the submission of the permit application.

* * * * *

■ 5. In § 111.96, paragraph (c) is revised to read as follows:

§ 111.96 Fees.

* * * * *

(c) *Permit user fee.* Payment of an annual permit user fee defined in § 24.22(h) of this chapter is required for a national permit granted to an individual, partnership, association, or corporate broker. The permit user fee is payable with the filing of an application for a national permit under § 111.19(b), and for each subsequent calendar year at the designated Center referred to in § 111.19(b). The permit user fee must be paid by the due date as published annually in the **Federal Register**, and must be remitted in accordance with the procedures set forth in § 24.22(i) of this chapter. When a broker submits an application for a national permit under § 111.19(b), the full permit user fee must be remitted with the application, regardless of the point during the calendar year at which the application is submitted. If a broker fails to pay the annual permit user fee by the published due date, the permit is revoked by operation of law. The director of the designated Center will notify the broker in writing of the failure to pay and the revocation of the permit.

* * * * *

Approved: March 3, 2020.

Timothy E. Skud,

Deputy Assistant Secretary, Department of the Treasury.

Mark A. Morgan,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2020–04708 Filed 6–4–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2020–OSERS–0015]

Proposed Requirements—The Individuals With Disabilities Education Act (IDEA) Paperwork Reduction Waivers

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

ACTION: Proposed requirements and definition.

SUMMARY: The Department of Education (Department) proposes requirements and a definition for waivers under section 609 of the Individuals with Disabilities Education Act (IDEA). The Department may select as many as 15 States to receive waivers of statutory requirements of, or regulatory requirements relating to, IDEA Part B, for a period of time not to exceed 4 years, to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities. The purpose of these waivers is to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities. Statutory requirements of, or regulatory

requirements relating to, applicable civil rights requirements or procedural safeguards under section 615 of IDEA may not be waived. The Department may use these proposed requirements and definition in fiscal year (FY) 2020 and later years.

DATES: We must receive your comments on or before August 19, 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 these proposed requirements, address them to David Egnor, U.S. Department of Education, 400 Maryland Avenue SW, Room 5163, Potomac Center Plaza, Washington, DC 20202–5076.

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: David Egnor, U.S. Department of Education, 400 Maryland Avenue SW, Room 5163, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7334. Email: *David.Egnor@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 requirements and definition. To ensure that your comments have maximum effect in developing the final requirements and definition, we urge you to identify clearly the specific section of the proposed requirements or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed requirements and definition. 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.

Directed Questions

1. We invite public comment on whether there are other specific issues the Department should consider when evaluating waiver proposals and whether we should require States, in their proposals, to provide further explanations of the legal and research-based supports for their proposals.

2. The Department's regulations implementing Section 504 of the Rehabilitation Act of 1973 (Section 504) and covering recipients that serve school-aged children with disabilities, as set out in 34 CFR 104.31 through 104.36, contain civil rights protections that often overlap with, or can be met through the implementation of, the protections in IDEA Part B. For example, implementation of an individualized education program (IEP) developed in accordance with IDEA Part B is one means of meeting the standard for an appropriate education under the Section 504 implementing regulations. See 34 CFR 104.33(b)(2). Likewise, the Section 504 implementing regulations require evaluations and reevaluations that meet certain criteria. 34 CFR 104.35(a), (b), and (d).

(a) Given the limitation that the Secretary may not waive any statutory or regulatory requirements of, or relating to, applicable civil rights requirements, the Department is seeking public comment on the best ways to address the close relationship between IDEA and the Section 504 protections that apply to school-aged children with disabilities.

(b) Because of the overlap between IDEA and Section 504, should States, in their waiver proposals, be required to include a specific explanation of why the waiver sought would not conflict with requirements of, or relating to, Section 504 and its implementing regulations?

3. We are particularly interested in comments regarding paragraphs (a)(6) and (a)(7) of the proposed requirements. These requirements originally appeared in the 2007 final requirement. (We discuss the 2007 final requirements in greater detail in the Background section of this notice.) However, we are interested in public comment on whether these paragraphs are sufficiently clear that parents have the right to understand and consent to changes that affect their children's education and do not imply that waivers of FAPE are permitted under this program.

During and after the comment period, you may inspect all public comments about the proposed requirements and definition by accessing *Regulations.gov*. You may also inspect the comments in person in room 5163, 550 12th Street SW, Potomac Center Plaza, 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 requirements and definition. 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 purpose of this program is to provide an opportunity for States to reduce excessive paperwork and noninstructional time burdens on special education teachers, related services providers, and State and local administrators, thus increasing time and resources available for instruction and other activities that would improve educational and functional results for children with disabilities.

Program Authority: 20 U.S.C. 1408.

Proposed Requirements

Background

The Secretary believes that all students should be given the opportunity to succeed and that their success should be the primary focus of everyone in the educational system. When teachers, related services providers, and administrators who serve children with disabilities spend time completing unnecessary paperwork, their ability to prioritize and focus on improving outcomes for children with disabilities is hampered.

In the 2004 reauthorization of IDEA, Congress recognized that some Federal IDEA Part B requirements could create excessive paperwork and noninstructional time burdens on

special education teachers, related services providers, and State and local administrators, thus diverting time and resources away from instruction and other activities that would improve educational and functional results for children with disabilities.

As such, under section 609 of IDEA, Congress gave the Department limited authority to grant waivers of certain requirements of IDEA Part B. Waivers may be granted to not more than 15 States and for a period not to exceed 4 years. Further, the Secretary may not waive any statutory or regulatory provisions relating to applicable civil rights requirements or allow a State or local educational agency to waive procedural safeguards under section 615 of IDEA, and waivers may not affect the right of a child with a disability to receive a free appropriate public education (FAPE) under IDEA Part B. In short, States' waiver proposals must preserve the fundamental rights of children with disabilities under IDEA.[1] In addition, States have always had the authority, within the constraints of State law, to change or waive State requirements that exceed IDEA statutory and regulatory requirements in order to reduce administrative burden.

In this document, we are proposing requirements and a definition for States to apply for paperwork waivers under section 609 of IDEA and thereby increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

Elsewhere in this issue of the **Federal Register**, we are proposing priorities, requirements, and selection criteria for the IDEA Paperwork Reduction Planning and Implementation program, through which the Department intends to make grant funds available to plan for and implement reductions of excessive paperwork and noninstructional time burdens under IDEA section 609.

IDEA is silent with respect to the selection criteria the Department may use to evaluate State proposals. On October 12, 2007, through a notice published in the **Federal Register**, the Department solicited State proposals under what was then called the IDEA Paperwork Waiver Demonstration Program (72 FR 58066). At that time, the Department relied on a notice of final additional requirements and selection criteria published in the **Federal Register** on July 6, 2007 (72 FR 36970), which, in part, governed how States could apply for a waiver under IDEA section 609. However, that notice specified that the additional requirements and selection criteria were only eligible to be used once, which the Department did in 2007.

We are, therefore, again issuing a notice of proposed requirements and definition for waiver proposals. The Department is proposing to use many of the same requirements for the waivers as it did in 2007 because we believe they still represent a sensible and practical approach to implementating the statutory requirements in section 609 of IDEA. Specifically, paragraphs (a)(1) through (7) of these proposed requirements come from the 2007 notice. We invite public comment on the extent to which those requirements remain appropriate and whether the Department should include fewer, additional, or different requirements.

Further, section 609(a)(3) of IDEA establishes requirements for a State's waiver proposal. Paragraphs (a)(8) and (9) of the proposed requirements reflect those requirements. Consistent with IDEA sections 602(22), 602(31), and 610, ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, each of the outlying areas (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands), and the freely associated States (the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau).

Finally, the Department is primarily interested in granting waiver proposals designed to produce the greatest benefits as measured by the number of burden hours reduced, the number of instructional hours gained, and the number of personnel and students with disabilities positively affected by the waivers. As a result, paragraphs (a)(10), (a)(11), (b), (c), (d), and (e) of the proposed requirements require States, in their waiver proposals, to include a discussion of (1) the interaction between the Federal IDEA Part B requirements they propose to waive and any related State requirements, (2) activities the State proposes to undertake to implement the proposed waiver, and (3) how the State will evaluate the effectiveness of the proposed waiver.

The Department intends to accept waiver proposals from States for 12 months following publication of an appropriate notice. The Department will review each proposal to determine whether the waivers are legally permissible and likely to generate the meaningful benefits contemplated in IDEA for personnel and the students with disabilities they serve.

Proposed Requirements: We propose the following requirements for a proposal to waive certain requirements of, or relating to, IDEA Part B under section 609. We may apply one or more of these requirements in any year in which this program is in effect.

(a) An applicant must include in its proposal the following:

(1) A description of how the State[2] met the public participation requirements of section 612(a)(19) of IDEA, including how the State—

(i) Involved multiple stakeholders, including parents, children with disabilities, special education and regular education teachers, related services providers, and school and district administrators, in selecting the requirements proposed for the waiver and any specific proposals for changing those requirements to reduce excessive paperwork; and

(ii) Provided an opportunity for public comment, including from individuals with disabilities and parents of children with disabilities, in selecting the requirements proposed for the waiver.

(iii) Held public hearings, and provided adequate notice of the hearings, to solicit input on the selection of requirements proposed for the waiver.

(2) A summary of public comments received in accordance with paragraph (a)(1) of these requirements and how the public comments were addressed in the proposal.

(3) A description of the procedures the State will employ to ensure that, if the waiver is granted, it will not result in a denial of FAPE to any child with a disability, infringe on any applicable civil rights requirements, or result in a waiver of any procedural safeguards under section 615 of IDEA. This description also must include an assurance that the State will collect and report to the Department, as part of the State's annual performance report to the Secretary in accordance with section 616(b)(2)(C)(ii)(II) of IDEA, all State

[1] For any State that receives a waiver of Federal IDEA Part B requirements, the Secretary will terminate the waiver if the Secretary determines that the State failed to appropriately implement its waiver, or the Secretary determines the State needs assistance in implementing IDEA requirements and the waiver has contributed to or caused such need for assistance. The Secretary will also terminate the waiver if the Secretary determines the State needs intervention in implementing IDEA requirements, or needs substantial intervention in implementing IDEA requirements.

[2] Consistent with IDEA sections 602(22), 602(31), and 610, ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, each of the outlying areas (United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands), and the freely associated States (the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau).

complaints and due process hearings resulting from the waivers and related to the denial of FAPE to any child with a disability or a waiver of any procedural safeguards under section 615 of IDEA and how the State responded to this information, including the outcome of that response such as providing technical assistance to the local educational agency (LEA) to improve implementation, or suspending or terminating the authority of an LEA to waive paperwork requirements due to unresolved compliance problems.

(4) A description of the procedures the State will employ to ensure that diverse stakeholders (including parents, teachers, administrators, related services providers, and other stakeholders, as appropriate) understand the proposed elements of the State's submission for the IDEA Paperwork Reduction Waivers.

(5) Assurances that every parent of a child with a disability in participating LEAs will be given, in easily understandable language, written notice (in the native language of the parent, unless it is clearly not feasible to do so) of all statutory, regulatory, or State requirements that will be waived and the procedures that the State will employ under paragraph (a)(3) of these requirements.

(6) Assurances that the State will require any participating LEA to obtain voluntary informed written consent from parents for a waiver of any paperwork requirements related to the provision of FAPE.

(7) Assurances that the State will require any participating LEA to inform parents in writing (in the native language of the parents, unless it is clearly not feasible to do so) of—

(i) Any differences between the paperwork requirements under the waiver program approved for the State and the existing paperwork requirements of IDEA related to the provision of FAPE;

(ii) The parent's right to revoke consent to waive any paperwork requirements related to the provision of FAPE at any time; and

(iii) The LEA's responsibility to meet all paperwork requirements related to the provision of FAPE if the parent does not provide voluntary written informed consent or revokes consent.

(8) A list of any statutory requirements of, or regulatory requirements relating to, IDEA Part B that the State desires the Secretary to waive, in whole or in part. For each requirement, the State should discuss how waiving the requirement will—

(i) Reduce excessive paperwork and noninstructional time burdens on special education teachers, related services providers, and State and local administrators;

(ii) Not affect the right of a child with a disability to receive FAPE under IDEA Part B, infringe on any applicable civil rights requirements, or result in the waiver of any procedural safeguards under section 615 of IDEA.

(9) A list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

(10) A description of the interplay between the requirements described in paragraph (a)(8) and any State requirements including, but not limited to, those described in paragraph (a)(9).

(11) A description of the anticipated benefits of the proposed waiver, including, but not limited to—

(i) The total reduction in burden hours on State and local personnel and the total number of instructional hours gained, disaggregated by applicable statutory or regulatory provision;

(ii) The total number of administrators and direct service providers affected, including the number of individuals in each group, disaggregated by applicable statutory or regulatory provision; and

(iii) The total number of likely beneficiaries, and the magnitude and scope of anticipated benefits and other activities intended to improve educational and functional results for children with disabilities.

(12) A State that received a planning grant under the IDEA Paperwork Reduction Planning and Implementation Program (84.326F) must include in its waiver proposal the plan the State developed under that program.

(b) An applicant must include in its proposal its proposed plan to disseminate information and materials regarding any revisions to requirements, policies, procedures, or practices made in conjunction with the waiver to relevant stakeholders, including, but not limited to, LEAs; private schools (including parochial schools) that provide services to children with disabilities; charter management organizations; the State Advisory Panel, as defined in section 612(a)(21) of IDEA; and parent organizations, as that term is defined in sections 671(a)(2) and 672(a)(2) of IDEA.

(c) An applicant must assure that it will make publicly available all information regarding changes to requirements, policies, procedures, or practices made in conjunction with the waiver.

(d) An applicant must include in its proposal its proposed plan to provide training on revisions to requirements, policies, procedures, or practices made under the waiver to staff in LEAs, private schools (including parochial schools) that provide services to children with disabilities, and other appropriate service providers and administrators.

(e) An applicant must include in its proposal its proposed plan to collect and analyze data on specific and measurable goals, objectives, and outcomes of the project related to the implementation of any waiver granted, including data on the effectiveness of the waiver in—

(1) Reducing—

(i) The paperwork burden on teachers, principals, administrators, and related services providers; and

(ii) Noninstructional time spent by teachers in complying with IDEA Part B;

(2) Enhancing longer-term educational planning;

(3) Improving positive outcomes, including educational and functional results, for children with disabilities;

(4) Promoting collaboration between IEP Team members; and

(5) Ensuring satisfaction of family members.

(f) An applicant must submit its proposal with a letter signed by an appropriate State official, or his or her designee, stating that—

(1) The appropriate State official is authorized to make the proposal for a waiver under State law; and

(2) The proposal meets all of the applicable requirements for a waiver.

Proposed Definition

We propose the following definition for the proposed requirements. We may apply this definition in any year in which the requirements are in effect.

''Applicable civil rights requirements,'' includes, but is not limited to, the civil rights protections in the United States Constitution and the requirements in the following legislation and their respective implementing regulations:

(1) Section 504 of the Rehabilitation Act of 1973, as amended.

(2) Title VI of the Civil Rights Act of 1964.

(3) Title IX of the Education Amendments of 1972.

(4) Title II of the Americans with Disabilities Act of 1990.

(5) Age Discrimination Act of 1975.

Final Requirements and Definition

We will announce the final requirements and definition in a document in the **Federal Register**. We will determine the final requirements and definition after considering public comments on the proposed requirements and definition and other

information available to the Department. This document does not preclude us from proposing priorities, additional requirements, additional definitions, or selection criteria subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use the resulting final requirements and definition, we intend to invite applications through a separate notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771 Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines 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 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 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 the proposed requirements and definition based on a reasoned determination that the benefits would justify the 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. These potential costs are those that would be incurred by a State making an application for a waiver to the Secretary following the requirements proposed by this regulatory action.

In addition, we have considered the potential benefits of this regulatory action and have noted these benefits in the background section of this document. The potential benefits include a reduction in the administrative burden hours under IDEA on State and local personnel and a corresponding gain in instructional time and services for children with disabilities.

Paperwork Reduction Act of 1995

The proposed requirements contain information collection requirements that are approved by OMB under OMB control number 1820–0028; the proposed requirements 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 these proposed requirements and definition 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?

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 (RFA) 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 proposed requirements and definition would not affect any small entities, as only States, as defined in the IDEA, are eligible to apply. No States qualify as small entities for purposes of the RFA.

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.

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

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

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schultz,

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

[FR Doc. 2020–11416 Filed 6–4–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2020–0110; FRL–10010–34–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Air Pollution Emission Notice Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions and renumbering submitted by the State of Colorado on May 8, 2019. Specifically, the EPA is proposing to approve amendments to Colorado's Stationary Source Permitting and Air Pollution Emission Notice Requirements in 5 CCR 1001–5, Regulation Number 3. The EPA is taking this action pursuant to sections 110 of the Clean Air Act (CAA).

DATES: *Comments:* Written comments must be received on or before July 6, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2020–0110, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

On May 8, 2019, the State of Colorado submitted a SIP revision containing amendments to 5 CCR 1001–5, Regulation Number 3 (Stationary Source Permitting and Air Pollution Emission Notice Requirements). Specifically, these amendments revised Part A, VI.C. (Annual Emissions Fees) and VI.D. (Fee Schedule). These revisions are anticipated to cover revenue shortfalls and ensure continued program viability by increasing stationary source fees. The State of Colorado adopted these revisions on October 18, 2018, and they became State effective on November 30, 2018. We are proposing approval of all revisions submitted on May 8, 2019.

II. Analysis of State Submittal

We evaluated the State's May 8, 2019, submittal regarding revisions Regulation Number 3, Part A, Section VI.

1. VI.C.2

A reference to Section VI.D.1 is being revised to VI.D.3 to coincide with revisions to VI.D.

2. VI.D.1

For air pollution emission notice filing fees, the phrase ''. . . shall be charged in accordance with and in the amounts and limits specified in the provisions of Colorado Revised Statutes Section 25–7–114.1'' is being deleted and new phrase ''shall be $191.13'' is being added.

We note that Colorado Revised Statutes Section 25–7–114.1 states:

''The maximum fee for filing an air pollution emission notice or amendment thereto under this section is one hundred ninety-one dollars and thirteen cents; except that, on each January 1 from 2019 to 2028, the maximum fee is automatically adjusted based on the annual percentage change in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index. The commissioner shall set the actual fee by rule. Beginning on July 1, 2018, the commission, by rule, may periodically adjust the fee up to the maximum fee.''

The revision to VI.D.1 would make the maximum fee ($191.13) the only filing fee for air pollution emission notices.

3. VI.D.2

The new sentence ''Permit processing fees shall be $95.56 per hour'' is added.

4. VI.D.3

The phrase ''Annual emission fees and permit processing fees shall be charged in accordance with and in the amounts and limits specified in the provisions of Colorado Revised Statutes Section 25–7–114.7.'' is being deleted.

In addition, the phrase ''Annual emission fees for regulated pollutants shall be $22.90 per ton'' is being revised to state: ''Annual emission fees for regulated pollutants shall be $28.63 per ton''; and the phrase ''Annual emission fees for hazardous air pollutants shall be $152.90 per ton'' is being revised to state: ''Annual emission fees for hazardous air pollutants shall be $191.13 per ton.''

The new annual emission fees for regulated pollutants and hazardous air pollutants are the same as the maximum emission fees as stated in Colorado Revised Statutes Section 25–7–114.7.

III. The EPA's Proposed Action

CAA Section 110(a)(2)(E) requires that a state implementation plan provide assurances that the state will have, among other items, adequate funding to carry out the implementation plan. Increasing the air pollution notice filing fee, permit processing fee and annual emission fees reflect both inflation and the increased complexity of permit to construct applications, thereby ensuring the State has adequate funding to carry out the implementation plan.

In this action, the EPA is proposing to approve SIP amendments to Colorado's Regulation Number 3, shown in Table 1, submitted by the State of Colorado on May 8, 2019.

TABLE 1—LIST OF COLORADO AMENDMENTS THAT THE EPA IS PROPOSING TO APPROVE

Amended sections in the May 8, 2019 submittal proposed for approval
Regulation Number 3, Part A, Section VI.C: VI.C.2; Section VI.D: VI.D.1, VI.D.2, VI.D.3.

IV. Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress (RFP) toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and public hearing.

The Colorado SIP revisions that the EPA proposes to approve do not interfere with any applicable requirements of the Act. Therefore, CAA section 110(l) requirements are satisfied.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the amendments described in sections II and III. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Sulfur oxides.

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

Dated: May 29, 2020.

Gregory Sopkin,

Regional Administrator, Region 8.

[FR Doc. 2020–12060 Filed 6–4–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 9, 15, 19, and 52

[FAR Case 2017–019; Docket No. FAR–2017–0019, Sequence No. 1]

RIN 9000–AN59

Federal Acquisition Regulation: Policy on Joint Ventures

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 implement statutory and regulatory changes regarding joint ventures made by the Small Business Administration (SBA) in its final rule published in the **Federal Register** on July 25, 2016, and to clarify that 8(a) joint ventures are not certified into the 8(a) program and that 8(a) joint venture agreements need only be approved by the SBA prior to contract award.

DATES: Interested parties should submit written comments at the address shown below on or before August 4, 2020 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2017–019 to *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2017–019.'' Select the link ''Comment Now'' that corresponds with FAR Case 2017–019. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2017–019'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FAR Case 2017–019, in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Malissa Jones, Procurement Analyst, at 703–605–2815 or by email at *Malissa.Jones@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2017–019.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to revise the FAR to implement statutory and regulatory changes made by the Small Business Administration (SBA) regarding joint ventures. These changes allow a joint venture comprised of a protégé and its mentor to qualify as a small business or under a socioeconomic program (*e.g.,* 8(a)) for which the protégé qualifies. These changes also provide updated requirements for other joint ventures to qualify as a small business or under a socioeconomic program.

Section 1347 of the Small Business Jobs Act of 2010 (Pub. L. 111–240) and section 1641 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239; 15 U.S.C. 657r) authorized the SBA Administrator to establish mentor-protégé programs for small business concerns, service-disabled veteran-owned small business (SDVOSB) concerns, women-owned small business concerns in the Women-Owned Small Business (WOSB) Program, and HUBZone small business concerns modeled on the mentor-protégé program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)). On July 25, 2016, SBA issued a final rule (81 FR 48558) that implemented the mentor-protégé programs at 13 CFR 125.9. SBA's final rule allows a joint venture comprised of a protégé and its mentor to seek any type of small business contract, including under a socioeconomic program, for which the protégé qualifies.

SBA's final rule updated requirements for a joint venture to qualify as a small business concern or under a socioeconomic program. A joint venture qualifies as a small business concern when each of the parties to the joint venture qualifies as small for the size standard associated with the North American Industry Classification System (NAICS) code in the solicitation. A joint venture may qualify under a socioeconomic program when at least one party to the joint venture qualifies under a socioeconomic program, and the joint venture meets the applicable joint venture requirements specified in the SBA regulations.

SBA's final rule also revised the joint venture regulations at 13 CFR 124.513 for 8(a) participants, 125.18(b) for SDVOSBs; 126.616 for HUBZone small business concerns; and 127.506 for WOSB and economically disadvantaged WOSB concerns. SBA required agencies to consider past performance of each party to a small business joint venture in addition to any work performed by the joint venture itself.

DoD, GSA, and NASA are proposing to amend the FAR to require contracting officers to consider the past performance of the joint venture, and to consider the past performance of each party to the joint venture if the joint venture does not demonstrate past performance. For consistency and fairness, DoD, GSA, and NASA are proposing to amend the FAR to apply this requirement to joint ventures regardless of size status.

Additionally, DoD, GSA, and NASA are proposing to amend the FAR to clarify that 8(a) joint ventures are not certified into the 8(a) program and that 8(a) joint venture agreements need only be approved by the SBA prior to contract award. This clarification is necessary because Government Accountability Office (GAO) sustained a protest (BGI-Fiore JV, LLC, B–409520, May 29, 2014) in which an agency rejected an 8(a) joint venture's proposal on the basis that the 8(a) joint venture had not been certified by the SBA prior to submission of proposals. Currently, paragraph (a) of the clause at FAR 52.219–18, Notification of Competition

Limited to Eligible 8(a) Concerns, states that, ''Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) program and which meet the following criteria at the time of submission of offer . . . .'' This language could be interpreted to mean that 8(a) joint ventures that submit an offer for an 8(a) contract need to be ''certified'' by the SBA and that their joint venture agreement needs to be approved by the SBA by ''the time of submission of offer.'' This rule proposes clarifications to prevent the improper elimination of 8(a) joint venture proposals in the future.

II. Discussion and Analysis

The proposed changes to the FAR are summarized in the following paragraphs.

A. *Definition of ''small business concern.''* The definition of ''small business concern'' is revised in subpart 2.1, as well as in the following provisions and clauses: FAR 52.212–3, Offeror Representations and Certification—Commercial Items; FAR 52.219–1, Small Business Program Representations; FAR 52.219–8, Utilization of Small Business Concerns; and FAR 52.219–28, Post-Award Small Business Program Rerepresentation. This revision removes extraneous material concerning how to determine whether a small business concern is ''not dominant in its field of operation.'' That determination is made by SBA and is addressed in SBA regulations at 13 CFR 121.102(b).

B. *Consideration of past performance of parties to a joint venture.* This rule clarifies that the contracting officer shall consider the past performance of the joint venture. If the joint venture does not demonstrate past performance for award, the contracting officer shall consider the past performance of each party to the joint venture when making a responsibility determination and when past performance is an evaluation factor for source selection. This clarification is made in subpart 9.1, Responsible Prospective Contractors, and in subpart 15.3, Source Selection.

C. *Qualification of joint ventures as small business concerns.* Subpart 19.3, Determination of Small Business Status for Small Business Programs, is amended to address how a joint venture may qualify for an award as a small business concern or under the socioeconomic programs. A joint venture may qualify as a small business concern if each participant in the joint venture qualifies as small under the size standard for the solicitation; or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved agreement under a SBA mentor-protégé program. A joint venture may qualify under socioeconomic programs when the joint venture qualifies as a small business joint venture and one of the parties to the joint venture qualifies under one or more of the socioeconomic programs. Similar text is added to subparts 19.13, Historically Underutilized Business Zone (HUBZone) Program; 19.14, Service-Disabled Veteran-Owned Small Business Procurement Program; and 19.15, Women-Owned Small Business Program. Similar text is also added to the following provisions and clauses: FAR 52.212–3, Offeror Representations and Certifications—Commercial Items; FAR 52.219–1, Small Business Program Representations; FAR 52.219–8, Utilization of Small Business Concerns; FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Participants; FAR 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside; FAR 52.219–29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns; and FAR 52.219–30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

D. *Subpart 19.7, The Small Business Subcontracting Program.* This subpart is amended to remove instructions for contractors that already exist in the clause at FAR 52.219–8, Utilization of Small Business Concerns.

E. *Subpart 19.8, Contracting with the Small Business Administration (the 8(a) Program).* This subpart is amended to add language to FAR sections 19.804–3, SBA acceptance, and 19.805–2, Procedures, to clarify that at least one party to the joint venture must be certified as an 8(a) program participant at the time of proposal submission and that the 8(a) joint venture agreement shall be approved prior to contract award. In addition, pursuant to 13 CFR 124.503 and 13 CFR 124.507, language is added to clarify the general time period within which SBA expects to approve the joint venture agreement prior to award and the procedure to follow if a response is not received within that time period. The rule also proposes to delete text from 19.805–2(b) relating to how SBA determines eligibility because it creates confusion regarding the timing of SBA's determination.

F. *Performance requirement for certain joint ventures.* This rule proposes to amend the following contract clauses to add the requirement that certain small business or socioeconomic parties to a joint venture perform 40 percent of the work performed by the joint venture and that the work performed must be more than administrative functions: FAR 52.219–3, Notice of HUBZone Set-Aside or Sole Source Award; FAR 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns; FAR 52.219–14, Limitations on Subcontracting; FAR 52.219–27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside; FAR 52.219–29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns; and FAR 52.219–30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

III. 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 proposes to amend subparts 2.1, Definitions, 9.1, Responsible Prospective Contractors, and 15.3, Source Selection; multiple subparts of part 19, Small Business Programs; and multiple provisions and clauses related to small business programs. The objective of this rule is to update the FAR to align with SBA regulations regarding joint ventures and to provide clarifications for 8(a) joint ventures.

The Federal Acquisition Regulatory (FAR) Council has made the following preliminary determinations with respect to the proposed rule's application of section 1641 of the NDAA for FY 2013 to contracts at or below the simplified acquisition threshold (SAT) and for the acquisition of commercial items. The Administrator for Federal Procurement Policy has made the following preliminary determination with respect to commercially available off-the-shelf (COTS) items. Discussion of these preliminary determinations is set forth below. The FAR Council will consider public feedback before making a final determination on the scope of the final rule.

A. Applicability to Contracts at or Below the SAT

Pursuant to 41 U.S.C. 1905, a provision of law is not applicable to acquisitions at or below the SAT unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1905 and states that the law

applies to acquisitions at or below the SAT; or (iii) the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT. If none of these conditions are met, the FAR is required to include the statutory requirement(s) on a list of provisions of law that are inapplicable to acquisitions at or below the SAT.

The purpose of this rule is to implement section 1641 of the NDAA for FY 2013. Section 1641 authorized the SBA Administrator to establish mentor-protégé programs for small business concerns, SDVOSB concerns, WOSB concerns in the WOSB Program, and HUBZone small business concerns modeled on the mentor-protégé program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

These statutory requirements are reflected in SBA's final rule published in the **Federal Register** at 81 FR 48558, on July 25, 2016, which did not exempt acquisitions at or below the SAT.

The law is silent on the applicability of these requirements to acquisitions at or below the SAT and does not independently provide for criminal or civil penalties; nor does it include terms making express reference to 41 U.S.C. 1905 and its application to acquisitions at or below the SAT. Therefore, it does not apply to acquisitions at or below the SAT unless the FAR Council makes a written determination as provided at 41 U.S.C. 1905.

Application of the law to acquisitions at or below the SAT will ensure that the benefits from socioeconomic set-aside and sole source contracts flow to the intended parties. According to the Federal Procurement Data System, an average of 283,374 contracts per year resulted from FAR part 19 set-asides and sole-source awards at or below the simplified acquisition threshold during fiscal years 2016–2018. Not applying section 1641 to the maximum extent possible would exclude a significant number of acquisitions and impede the Administration's objectives to assist small businesses, including SDVOSB, HUBZone small business, and WOSB concerns, to succeed in enhancing their capabilities and improving their ability to successfully compete for both Government and commercial contracts.

The provisions and clauses proposed for revision in this rule currently apply to all solicitations and contracts, as applicable, including those at or below the SAT. The proposed rule continues the existing applicability to solicitations and contracts below the SAT, while revising these clauses to implement the requirements of section 1641 concerning joint ventures. Exclusion of these acquisitions would create confusion among contractors and the Federal contracting workforce. Under the FAR clauses amended by this rule, contractors are already required to comply with small business program set-aside requirements. The effort required for contractors to comply with the new requirements will be relatively small.

For these reasons, it is in the best interest of the Federal Government to apply the requirements of the rule to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Items

Pursuant to 41 U.S.C. 1906, acquisitions of commercial items (other than acquisitions of COTS items, which are addressed in 41 U.S.C. 1907) are exempt from a provision of law unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1906 and states that the law applies to acquisitions of commercial items; or (iii) the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of commercial items from the provision of law. If none of these conditions are met, the FAR is required to include the statutory requirement(s) on a list of provisions of law that are inapplicable to acquisitions of commercial items.

The purpose of this rule is to implement section 1641 of the NDAA for FY 2013. Section 1641 allows a joint venture comprised of a protégé and its mentor to qualify as a small business or under a socioeconomic program for which the protégé qualifies and implements SBA regulations establishing mentor-protégé programs for small business concerns, SDVOSB concerns, WOSB concerns in the WOSB Program, and HUBZone small business concerns modeled on the mentor-protégé program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

These statutory requirements are reflected in SBA's final rule published in the **Federal Register** at 81 FR 48558, on July 25, 2016, which did not exempt acquisitions of commercial items.

The law is silent on the applicability of these requirements to acquisitions of commercial items and does not independently provide for criminal or civil penalties; nor does it include terms making express reference to 41 U.S.C. 1906 and its application to acquisitions of commercial items. Therefore, it does not apply to acquisitions of commercial items unless the FAR Council makes a written determination as provided at 41 U.S.C. 1906.

The law furthers the Administration's goal of supporting small business. It advances the interests of small business concerns by allowing for more joint ventures that include a small business to qualify as a small business or under a socioeconomic program. Therefore, more small businesses can qualify for set-aside procurements. Exclusion of a large segment of Federal contracting, such as acquisitions for commercial items, will limit the full implementation of these objectives.

The provisions and clauses proposed for revision in this rule currently apply to all solicitations and contracts, as applicable, including those for acquisition of commercial items. The proposed rule continues the existing applicability to the acquisition of commercial items as defined at FAR 2.101. Exclusion of acquisitions for commercial items from these requirements would create confusion among contractors and the Federal contracting workforce. Under the FAR clauses amended by this rule, contractors are already required to comply with small business program set-aside requirements. The effort required for contractors to comply with the new requirements will be relatively small.

For these reasons, it is in the best interest of the Federal Government to apply the requirements of the rule to the acquisition of commercial items.

C. Applicability to Contracts for the Acquisition of COTS Items

Pursuant to 41 U.S.C. 1907, acquisitions of COTS items will be exempt from a provision of law unless the law (i) contains criminal or civil penalties; (ii) specifically refers to 41 U.S.C. 1907 and states that the law applies to acquisitions of COTS items; (iii) concerns authorities or responsibilities under the Small Business Act (15 U.S.C. 644) or bid protest procedures developed under the authority of 31 U.S.C. 3551 *et seq.,* 10 U.S.C. 2305(e) and (f), or 41 U.S.C. 3706 and 3707; or (iv) the Administrator for Federal Procurement Policy makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law. If none of these conditions are met, the FAR is required to include the statutory requirement(s) on a list of provisions of law that are inapplicable to acquisitions of COTS items.

The purpose of this rule is to implement section 1641 of the NDAA

for FY 2013. Section 1641 allows a joint venture comprised of a protégé and its mentor to qualify as a small business or under a socioeconomic program for which the protégé qualifies, and implements SBA regulations establishing mentor-protégé programs for small business concerns, SDVOSB concerns, WOSB concerns in the WOSB Program, and HUBZone small business concerns modeled on the mentor-protégé program under section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

These statutory requirements are reflected in SBA's final rule published in the **Federal Register** at 81 FR 48558, on July 25, 2016, which did not exempt acquisitions of COTS items.

The law is silent on the applicability of these requirements to acquisitions of COTS items and does not independently provide for criminal or civil penalties; nor does it include terms making express reference to 41 U.S.C. 1907 and its application to acquisitions of COTS items. Therefore, it does not apply to acquisitions of COTS items unless the Administrator for Federal Procurement Policy makes a written determination as provided at 41 U.S.C. 1907.

Section 1641 furthers the Administration's goal of supporting small business. It advances the interests of small business concerns by allowing for more joint ventures that include a small business to qualify as a small business concern or under a socioeconomic program. Therefore, more small businesses can qualify for set-aside procurements. Exclusion of a large segment of Federal contracting, such as acquisitions for COTS items, will limit the full implementation of these objectives.

The provisions and clauses proposed for revision in this rule currently apply to all solicitations and contracts, as applicable, including those for acquisition of COTS items. The proposed rule continues the existing applicability to the acquisition of COTS items as defined at FAR 2.101. Exclusion of these acquisitions would create confusion among contractors and the Federal contracting workforce. Under the FAR clauses amended by this rule, contractors are already required to comply with small business program set-aside requirements. The effort required for contractors to comply with the new requirements will be relatively small.

For these reasons, it is in the best interest of the Federal Government to apply the requirements of the rule to the acquisition of COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not expected to be subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

This proposed rule 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:

DoD, GSA, and NASA are proposing to amend the FAR to update joint venture requirements to align with the changes SBA made in its final rule dated July 25, 2016 (81 FR 48558), and to add clarifications regarding 8(a) joint ventures to address issues identified in a GAO protest decision (B–409520).

Section 1347 of the Small Business Jobs Act of 2010 and section 1641 of the NDAA for FY 2013 authorized SBA to establish mentor-protégé programs for small business concerns, service-disabled veteran-owned small business concerns, women-owned small business concerns in the Women-Owned Small Business (WOSB) Program, and HUBZone small business concerns. SBA issued a final rule (81 FR 48558) that implemented the mentor-protégé programs at 13 CFR 125.9. SBA's final rule allows a joint venture comprised of a protégé and its mentor to qualify as a small business or under a socioeconomic program for which the protégé qualifies. The rule also revised the requirements for joint ventures outside the mentor-protégé programs to qualify as small or for one of the socioeconomic programs. Updates are required in the FAR to reflect these regulatory changes.

On May 29, 2014, the GAO sustained a protest (B–409520, BGI-Fiore JV, LLC) because an 8(a) joint venture proposal was improperly eliminated on the grounds that the joint venture had not been certified for the 8(a) program by the SBA and that the joint venture agreement had not been approved by the SBA by the time of offer submission. The procuring agency had interpreted existing text in the clause at FAR 52.219–18 to require 8(a) joint ventures be certified by SBA and for the joint venture agreement to be approved by SBA at time of offer submission. Clarification for contracting officers is necessary in the FAR to more clearly reflect SBA's regulations at 13 CFR 124.503(a), 124.507(b), and 124.513(e) as well as GAO's bid protest decision.

The proposed rule 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.* This rule will impact small business joint ventures and small business entities in an SBA mentor-protégé program. Based on joint venture data in the System for Award Management (SAM), the estimated number of small business joint ventures is 3,500. Assuming that each joint venture includes 2 small businesses, the number of small entities impacted is 7,000. According to SBA's final rule, there are an estimated 2,000 pairs of mentors and protégés that may be impacted. Therefore, the estimated number of total small entities to which the rule applies is 9,000.

This proposed rule does not include any recordkeeping or other compliance requirements for small businesses. Joint ventures will be required to represent themselves as small businesses in accordance with the updated representation provisions at FAR 52.212–3 or 52.219–1. Representation is currently required for all small entities doing business with the Government; representation is not a new requirement. The number of options for the entities to select from has increased to include joint venture options; however the number of selections a small entity must make (*i.e.,* check boxes) has not increased. Therefore, the potential impact is minimal.

This rule may have a positive economic impact on small entities. The updated SBA regulations allow for more joint ventures that include a small business to qualify as a small business or under a socioeconomic program; and therefore, more small businesses can qualify for set-aside procurements.

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

There are no known significant alternative approaches to the proposed rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the SBA. 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 this rule in accordance with 5 U.S.C. 610. Interested parties must submit comments separately and should cite 5 U.S.C. 610

(FAR case 2017–019) in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies as this proposed rule contains information collection requirements. This rule affects the certification and information collection requirements in the provisions at FAR 52.212–3, Offeror Representations and Certifications—Commercial Items, and 52.204–7, System for Award Management, currently approved under OMB Control Numbers 9000–0136 and 9000–0097, respectively. The impact, however, is negligible because the public reporting burden for these collections remains unchanged from the approved burden.

List of Subjects in 48 CFR Parts 2, 9, 15, 19, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 9, 15, 19, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 9, 15, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, in paragraph (b) by revising the definition of ''Small business concern'' to read as follows:

2.101 Definitions.

* * * * *

(b) * * *

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see 19.102).

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

■ 3. Amend section 9.104–3 by redesignating paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2) to read as follows:

9.104–3 Application of standards.

* * * * *

(c)(1) * * *

(2) *Joint ventures.* For a prospective contractor that is a joint venture, the contracting officer shall consider the past performance of the joint venture. If the joint venture does not demonstrate past performance for award, the contracting officer shall consider the past performance of each party to the joint venture.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 4. Amend section 15.305 by adding paragraph (a)(2)(vi) to read as follows:

15.305 Proposal evaluation.

(a) * * *

(2) * * *

(vi) For offerors that are joint ventures, the evaluation shall take into account past performance of the joint venture. If the joint venture does not demonstrate past performance for award, the contracting officer shall consider the past performance of each party to the joint venture.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 5. Amend section 19.301–1 by revising paragraph (a) to read as follows:

19.301–1 Representation by the offeror.

(a)(1) To be eligible for award as a small business concern identified in 19.000(a)(3), an offeror is required to represent in good faith—

(i)(A) That it meets the small business size standard corresponding to the North American Industry Classification System (NAICS) code identified in the solicitation; or

(B) For a multiple-award contract where there is more than one NAICS code assigned, that it meets the small business size standard for each distinct portion or category (*e.g.,* line item numbers, Special Item Numbers (SINs), sectors, functional areas, or the equivalent) for which it submits an offer. If the small business concern submits an offer for the entire multiple-award contract, it must meet the size standard for each distinct portion or category (*e.g.,* line item number, SIN, sector, functional area, or equivalent); and

(ii) The Small Business Administration (SBA) has not issued a written determination stating otherwise pursuant to 13 CFR 121.1009.

(2)(i) A joint venture may qualify as a small business concern if the joint venture complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b) and if—

(A) Each party to the joint venture qualifies as small under the size standard for the solicitation; or

(B) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under an SBA mentor-protégé program.

(ii) A joint venture may qualify for an award under the socioeconomic programs as described in subparts 19.8, 19.13, 19.14, and 19.15.

* * * * *

■ 6. Amend section 19.703 by revising paragraph (d) to read as follows:

19.703 Eligibility requirements for participating in the program.

* * * * *

(d) Protests challenging the socioeconomic status of a HUBZone small business concern must be filed in accordance with 13 CFR 126.801.

* * * * *

■ 7. Amend section 19.804–3, in paragraph (c) introductory text, by adding a sentence to the end of the paragraph to read as follows:

19.804–3 SBA acceptance.

* * * * *

(c) * * * For a joint venture, SBA will determine eligibility as part of its acceptance of a sole source requirement and will approve the joint venture agreement prior to award in accordance with 13 CFR 124.513(e).

* * * * *

■ 8. Amend section 19.805–2 by revising paragraph (b) introductory text, and adding paragraphs (d) and (e) to read as follows:

19.805–2 Procedures.

* * * * *

(b) The SBA will determine the eligibility of the apparent successful offeror. Eligibility is based on section 8(a) program criteria. See paragraphs (d) and (e) of this section regarding eligibility of joint ventures.

* * * * *

(d)(1) SBA does not certify joint ventures, as entities, into the 8(a) program.

(2) A contracting officer may consider a joint venture for contract award if the SBA district office servicing the joint venture approves the joint venture agreement and provides a determination of eligibility pursuant to 13 CFR 124.507(b) prior to contract award.

(e) If SBA does not approve the joint venture agreement within 5 working days after receipt of the contracting activity's request for an eligibility determination, the contracting activity may seek SBA's approval through the

SBA Associate Administrator for Business Development.

■ 9. Amend section 19.1303 by revising paragraph (c) to read as follows:

19.1303 Status as a HUBZone small business concern.

* * * * *

(c) A joint venture may be considered a HUBZone small business concern if—

(1) The joint venture qualifies as small under 19.301–1(a)(2)(i);

(2) At least one party to the joint venture is a HUBZone small business concern; and

(3) The joint venture complies with 13 CFR 126.616(a) through (c).

* * * * *

■ 10. Amend section 19.1403 by revising paragraph (c) to read as follows:

19.1403 Status as a service-disabled veteran-owned small business concern.

* * * * *

(c) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) The joint venture qualifies as small under 19.301–1(a)(2)(i);

(2) At least one party to the joint venture is a service-disabled veteran-owned small business concern, and makes the representations in paragraph (b) of this section; and

(3) The joint venture complies with the requirements of 13 CFR 125.18(b).

* * * * *

■ 11. Amend section 19.1503 by revising paragraph (f) to read as follows:

19.1503 Status.

* * * * *

(f) A joint venture may be considered an EDWOSB concern or WOSB concern eligible under the WOSB Program if—

(1) The joint venture qualifies as small under 19.301–1(a)(2)(i);

(2) At least one party to the joint venture is an EDWOSB or WOSB, and complies with the criteria in paragraph (b) of this section; and

(3) The joint venture complies with the requirements of 13 CFR 127.506(a) through (c).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 12. Amend section 52.212–3 by—

■ a. Revising the date of the provision;

■ b. Removing from the introductory text ''(c) through (v))'' and adding ''(c) through (v)'' in its place;

■ c. In paragraph (a), revising the definition of ''Small business concern'';

■ d. Revising paragraphs (c)(1) and (3);

■ e. Removing from the end of paragraph (c)(6)(i) ''and'' and adding ''or'' in its place;

■ f. Revising paragraph (c)(6)(ii);

■ g. Removing from the end of paragraph (c)(7)(i) ''and'' and adding ''or'' in its place;

■ h. Revising paragraph (c)(7)(ii);

■ i. Removing from the end of paragraph (c)(10)(i) ''13 CFR Part 126; and'' and adding ''13 CFR 126.200; or'' in its place; and

■ j. Revising paragraph (c)(10)(ii).

The revisions read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (DATE)

* * * * *

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria in 13 CFR part 121 and size standards in this solicitation.

* * * * *

(c) * * *

(1) *Small business concern.* The offeror represents as part of its offer that—

(i) It □ is, □ is not a small business concern; or

(ii) It □ is, □ is not a small business joint venture that complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b). [*The offeror shall enter the unique entity identifier of each party to the joint venture:* _____.]

* * * * *

(3) *Service-disabled veteran-owned small business concern.* [*Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.*] The offeror represents as part of its offer that—

(i) It □ is, □ is not a service-disabled veteran-owned small business concern; or

(ii) It □ is, □ is not a joint venture that complies with the requirements of 13 CFR 125.18(b)(1) and (2). [*The offeror shall enter the unique entity identifier of each party to the joint venture:* _____.] Each service-disabled veteran-owned small business concern participating in the joint venture shall provide representation of its service-disabled veteran-owned small business concern status.

* * * * *

(6) * * *

(ii) It □ is, □ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The offeror shall enter the unique entity identifier of each party to the joint venture:* _____.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall provide representation of its WOSB status.

(7) * * *

(ii) It □ is, □ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The offeror shall enter the unique entity identifier of each party to the joint venture:* _____.] Each EDWOSB concern participating in the joint venture shall provide representation of its EDWOSB status.

Note to paragraphs (c)(8) and (9): Complete paragraphs (c)(8) and (9) only if this solicitation is expected to exceed the simplified acquisition threshold.

* * * * *

(10) * * *

(ii) It □ is, □ is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [*The offeror shall enter the unique entity identifier of each party to the joint venture:* _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall provide representation of its HUBZone status.

* * * * *

■ 13. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(11)(i) ''(MAR 2020)'' and adding ''(DATE)'' in its place;

■ c. Removing from paragraph (b)(12)(i) ''(MAR 2020)'' and adding ''(DATE)'' in its place;

■ d. Removing from paragraph (b)(16) ''(OCT 2018)'' and adding ''(DATE)'' in its place;

■ e. Removing from paragraph (b)(17)(i) ''(MAR 2020)'' and adding ''(DATE)'' in its place;

■ f. Removing from paragraph (b)(19) ''(MAR 2020)'' and adding ''(DATE)'' in its place;

■ g. Removing from paragraph (b)(21) ''(MAR 2020)'' and adding ''(DATE)'' in its place;

■ h. Removing from paragraph (b)(22)(i) ''(MAR 2020)'' and adding ''(DATE)'' in its place;

■ i. Removing from paragraph (b)(23) ''(MAR 2020)'' and adding ''(DATE)'' in its place;

■ j. Removing from paragraph (b)(24) ''(MAR 2020)'' and adding ''(DATE)'' in its place;

■ k. Removing from paragraph (e)(1)(v) ''(OCT 2018)'' and adding ''(DATE)'' in its place;

■ l. Revising the date of Alternate II; and

■ m. Removing from paragraph (e)(1)(ii)(E) of Alternate II ''(OCT 2018)'' and adding ''(DATE)'' in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items (DATE)

* * * * *

Alternate II (DATE). * * *

* * * * *

■ 14. Amend section 52.213–4 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a)(2)(viii) ''(AUG 2019)'' and adding ''(DATE)'' in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DATE)

* * * * *

■ 15. Amend section 52.219–1 by—

■ a. Revising the date of the provision;

■ b. In paragraph (a), revising the definition of ''Small business concern'';

■ c. Revising paragraph (c)(1);

■ d. Removing from the end of paragraph (c)(4)(i) ''and'' and adding ''or'' in its place, and revising paragraph (c)(4)(ii);

■ e. Removing from the end of paragraph (c)(5)(i) ''and'' and adding ''or'' in its place; and revising paragraph (c)(5)(ii);

■ f. Revising paragraph (c)(7); and

■ g. Removing from the end of paragraph (c)(8)(i) ''13 CFR Part 126; and'' and adding ''13 CFR 126.200; or'' in its place, and revising paragraph (c)(8)(ii);

The revisions read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (DATE)

* * * * *

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (b) of this provision.

* * * * *

(c) * * * (1) The offeror represents as part of its offer that—

(i) It □ is, □ is not a small business concern; or

(ii) It □ is, □ is not a small business joint venture that complies with the requirements of 13 CFR 121.103(h) and 13 CFR 125.8(a) and (b). [*The offeror shall enter the unique entity identifier of each party to the joint venture:* _____.]

* * * * *

(4) * * *

(ii) It □ is, □ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The offeror shall enter the unique entity identifier of each party to the joint venture:* _____.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall provide representation of its WOSB status.

* * * * *

(5) * * *

(ii) It □ is, □ is not a joint venture that complies with the requirements of 13 CFR 127.506(a) through (c). [*The offeror shall enter the unique entity identifier of each party to the joint venture:* _____.] Each EDWOSB concern participating in the joint venture shall provide representation of its EDWOSB status.

* * * * *

(7) [*Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(6) of this provision.*] The offeror represents as part of its offer that—

(i) It □ is, □ is not a service-disabled veteran-owned small business concern; or

(ii) It □ is, □ is not a service-disabled veteran-owned joint venture that complies with the requirements of 13 CFR 125.18(b)(1) and (2). [*The offeror shall enter the unique entity identifier of each party to the joint venture:* _____.] Each service-disabled veteran-owned small business concern participating in the joint venture shall provide representation of its service-disabled veteran-owned small business concern status.

(8) * * *

(ii) It □ is, □ is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [*The offeror shall enter the unique entity identifier of each party to the joint venture:* _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall provide representation of its HUBZone status.

* * * * *

■ 16. Amend section 52.219–3 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h), and adding a new paragraph (f); and

■ c. Revising the newly redesignated paragraph (g).

The revisions read as follows:

52.219–3 Notice of HUBZone Set-Aside or Sole Source Award.

* * * * *

Notice of HUBZone Set-Aside or Sole Source Award (DATE)

* * * * *

(f) *Joint venture.* A joint venture may be considered a HUBZone concern if—

(1) At least one party to the joint venture is a HUBZone small business concern and complies with 13 CFR 126.616(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(g) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause shall be performed by the aggregate of the parties to the joint venture. At least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business party or parties to the joint venture must be more than administrative functions.

* * * * *

■ 17. Amend section 52.219–4 by revising the clause title, date, and paragraph (e) to read as follows:

52.219–4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.

* * * * *

Notice of Price Evaluation Preference for HUBZone Small Business Concerns (DATE)

* * * * *

(e) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause shall be performed by the aggregate of the parties to the joint venture. At least 40 percent of the aggregate work performed by the joint venture shall be completed by the HUBZone small business parties to the joint venture. Work performed by the HUBZone small business parties to the joint venture must be more than administrative functions.

* * * * *

■ 18. Amend section 52.219–8 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), revising the definition ''Small business concern'';

■ c. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding a new paragraph (c); and
■ d. Revising the newly redesignated paragraph (e)(5) introductory text.

The revisions read as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

Utilization of Small Business Concerns (DATE)

* * * * *

(a) * * *

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria and size standards in 13 CFR part 121, including the size standard that corresponds to the NAICS code assigned to the contract or subcontract.

* * * * *

(c)(1) A joint venture qualifies as a small business concern if—

(i) Each party to the joint venture qualifies as small under the size standard for the solicitation; or

(ii) The protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under a SBA mentor-protégé program.

(2) A joint venture qualifies as—

(i) A service-disabled veteran-owned small business concern if it complies with the requirements in 13 CFR part 125; or

(ii) A HUBZone small business concern if it complies with the requirements in 13 CFR 126.616(a) through (c).

* * * * *

(e) * * *

(5) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern. If the subcontractor is a joint venture, the Contractor shall confirm that at least one party to the joint venture is certified by SBA as a HUBZone small business concern. The Contractor may confirm the representation by accessing the System for Award Management or contacting SBA. Options for contacting the SBA include—

* * * * *

■ 19. Amend section 52.219–9 by—
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (e)(4) ''52.219–8(d)(2)'' and adding ''52.219–8(e)(2)'' in its place.

The revision reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (DATE)

* * * * *

■ 20. Amend section 52.219–14 by revising the date of the clause and adding paragraph (e) to read as follows:

52.219–14 Limitations on Subcontracting.

* * * * *

Limitations on Subcontracting (DATE)

* * * * *

(e) *Joint ventures.* (1) In a joint venture comprised of a small business protégé and its mentor approved by the Small Business Administration, the small business protégé shall perform at least 40 percent of the work performed by the joint venture. Work performed by the small business protégé in the joint venture must be more than administrative functions.

(2) In an 8(a) joint venture, the 8(a) participant(s) shall perform at least 40 percent of the work performed by the joint venture. Work performed by the 8(a) participants in the joint venture must be more than administrative functions.

* * * * *

■ 21. Amend section 52.219–18 by—
■ a. Revising the date of the clause and paragraph (a);
■ b. Removing from paragraph (b) ''all of the'' and adding ''the applicable'' in its place; and
■ c. Adding paragraph (e);
■ d. Revising Alternate I.

The revisions and addition read as follows:

52.219–18 Notification of Competition Limited to Eligible 8(a) Participants.

* * * * *

Notification of Competition Limited to Eligible 8(a) Participants (DATE)

(a) Offers are solicited only from—

(1) Small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) program and which meet the following criteria at the time of submission of offer—

(i) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(ii) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA; or

(2) A joint venture, in which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause, that complies with 13 CFR 124.513(c); or

(3) A joint venture—

(i) That is comprised of a mentor and an 8(a) protégé with an approved mentor-protégé agreement under the 8(a) program;

(ii) In which at least one of the 8(a) program participants that is a party to the joint venture complies with the criteria set forth in paragraph (a)(1) of this clause; and

(iii) That complies with 13 CFR 124.513(c).

* * * * *

(e) *8(a) joint ventures.* The Contracting Officer may consider a joint venture for contract award if SBA approves the joint venture agreement and provides a determination of eligibility pursuant to 13 CFR 124.507(b) prior to contract award.

* * * * *

Alternate I (DATE). If the competition is to be limited to 8(a) participants within one or more specific SBA regions or districts, add the following paragraph (a)(1)(iii) to paragraph (a) of the clause:

(iii) The offeror's approved business plan is on the file and serviced by ____ _____[[*Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA*].

■ 22. Amend section 52.219–27 by—
■ a. Revising the date of the clause, and paragraph (f); and
■ b. Adding paragraph (g).

The revisions and addition read as follows:

52.219–27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside.

* * * * *

Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (DATE)

* * * * *

(f) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) of this clause and 13 CFR 125.18(b)(2); and

(2) Each party to the joint venture is small under the size standard corresponding to the NAICS code assigned to the procurement, or the protégé is small under the size standard corresponding to the NAICS code assigned to the procurement in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under an SBA mentor-protégé program.

(g) In a joint venture that complies with paragraph (f) of this clause, the service-disabled veteran-owned small business party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the service-disabled veteran-owned small business party or parties to the joint venture must be more than administrative functions.

* * * * *

■ 23. Amend section 52.219–28 by revising the date of the clause, and in paragraph (a) revising the definition of ''Small business concern'' to read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

* * * * *

Post-Award Small Business Program Rerepresentation (DATE)

(a) * * *

Small business concern means a concern, including its affiliates, that is independently owned and operated, not dominant in its field of operation and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (d) of this clause.

* * * * *

■ 24. Amend section 52.219–29 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), in the definition ''*Economically disadvantaged women-owned small business (EDWOSB)*'' removing ''It automatically'' and adding ''An EDWOSB concern automatically'' in its place;

■ c. Revising paragraph (f); and

■ d. Adding a new paragraph (g).

The revisions and addition read as follows:

52.219–29 Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns.

* * * * *

Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (DATE)

* * * * *

(f) *Joint Venture.* A joint venture may be considered an EDWOSB concern if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) and paragraph (c)(3) of this clause, and 13 CFR 127.506(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(g) In a joint venture that complies with paragraph (f) of this clause, the EDWOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the EDWOSB party or parties to the joint venture must be more than administrative functions.

* * * * *

■ 25. Amend section 52.219–30 by—

■ a. Revising the date of the clause and paragraph (f); and

■ b. Adding paragraph (g).

The revisions and addition read as follows:

52.219–30 Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

* * * * *

Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (DATE)

* * * * *

(f) *Joint Venture.* A joint venture may be considered a WOSB concern eligible under the WOSB Program if—

(1) At least one party to the joint venture complies with the criteria defined in paragraph (a) and (c)(3) of this clause, and 13 CFR 127.506(c); and

(2) Each party to the joint venture qualifies as small under the size standard for the solicitation, or the protégé is small under the size standard for the solicitation in a joint venture comprised of a mentor and protégé with an approved mentor-protégé agreement under the SBA mentor-protégé program.

(g) In a joint venture that complies with paragraph (f) of this clause, the WOSB party or parties to the joint venture shall perform at least 40 percent of the work performed by the joint venture. Work performed by the WOSB party or parties to the joint venture must be more than administrative functions.

* * * * *

■ 26. Amend section 52.244–6 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (c)(1)(vii) ''(OCT 2018)'' and adding ''(DATE)'' in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (DATE)

* * * * *

[FR Doc. 2020–11159 Filed 6–4–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, and 252

[Docket DARS–2020–0007]

RIN 0750–AK30

Defense Federal Acquisition Regulation Supplement: Data Collection and Inventory for Services Contracts (DFARS Case 2018–D063)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement a section of the United States Code that requires the collection of data on certain DoD service contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 4, 2020, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D063, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Search for ''DFARS Case 2018–D063'' under the heading ''Enter keyword or ID'' and select ''Search.'' Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D063'' on any attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D063 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal 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. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

Under Defense Federal Acquisition Regulation System (DFARS) case 2012–D051, DoD published a proposed rule in the **Federal Register** at 79 FR 32522 on June 5, 2014, to implement section 807 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (10 U.S.C. 2330a). Section 807 required DoD to: Establish a data collection system that provides certain data on the purchasing of services by DoD, and submit to Congress an annual inventory of service contracts awarded by or on behalf of the DoD. The proposed rule required contractors to enter the contract data required by the statute into a DoD-unique database, Enterprise Contractor Manpower Reporting Application (ECMRA). Fourteen respondents submitted comments in response to the proposed rule.

Subsequently, section 812 of the NDAA for FY 2017 amended 10 U.S.C. 2330a to narrow the scope of contracts to which the data collection requirement applies. As a result, DFARS Case 2012–D051 was closed and rolled into this new DFARS case to implement 10 U.S.C. 2330a, as amended.

Under a similar but different statute, Federal agencies, other than DoD, are required by Federal Acquisition Regulation (FAR) subpart 4.17 to report annually on activities performed by service contractors. Since the publication of the proposed rule DFARS case 2012–D051, DoD has elected to adopt the approach used by other Federal agencies to collect service contract data. The approach uses the Federal Procurement Data System (FPDS), an existing source of contract information for the Federal Government, to provide a majority of the information required by 10 U.S.C. 2330a. The data that is not available in FPDS is entered annually by the contractor in the System for Award Management (SAM). Adopting a Governmentwide approach to collecting service contract data reduces burden on both industry and DoD, improves data integrity and accuracy, and reforms DoD's business practices for greater performance and affordability.

II. Discussion and Analysis

A. Discussion of Proposed Rule

This rule proposes to revise the DFARS to implement 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017. This rule will require contractors to report data in SAM on an annual basis when they are awarded a DoD contract or task order that is valued in excess of $3 million and is for logistics management services, equipment related services, knowledge-based services, or electronics and communications services.

When applicable, contractors will be required to annually report: (1) The total dollar amount invoiced for, and (2) the total number of direct labor hours expended on services performed under the contract or task order during the preceding fiscal year. The total number of direct labor hours reported to SAM should be the total of both the contractor hours and its subcontractors' hours. A new basic DFARS clause and an alternate I clause have been created to advise applicable contractors of the policy and requirements for reporting data in SAM.

B. Analysis of Public Comments

DoD reviewed the public comments received in response to DFARS Case 2012–D051. A discussion of the comments is provided as follows:

1. Exemptions

Comment: Several respondents recommended that the rule exempt certain areas including: Research and development projects; architect and engineering services; telecommunications and transmission and internet; and actions using criteria similar to the Service Contract Labor Standards exemptions in FAR 22.1003–4(d)(1).

Response: This rule implements 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, which requires reporting for only four service acquisition portfolio groups: Logistics management services, equipment related services, knowledge-based services, and electronics and communications services. No further exemptions are available under the law.

Comment: Several respondents recommended that contracted services that meet the definition of commercial items be exempt from ECMRA reporting.

Response: The intent of the statute is to enhance DoD's ability to manage the total force, inclusive of military, civilian, and contractor personnel. Specifically, section 2330a requires the military departments and defense agencies to ensure that the inventory of contracts for services required by the statute is used to inform strategic workforce planning decisions under 10 U.S.C. 129a, develop budget justification materials for services in accordance with 10 U.S.C. 235, and ensure services contracts are not for the performance of inherently governmental functions. An exception for services that meet the definition of a commercial item would exclude significant sums expended by DoD on commercial service acquisitions intended to be covered by the law. Therefore, services meeting the definition of a commercial item are not exempt from the reporting requirement.

Comment: Several respondents recommended that firm fixed-price service contracts be exempt from the ECMRA reporting requirement, because these contracts acquire services in their entirety, not as individuals (full-time equivalents).

Response: In accordance with paragraph (b) of 10 U.S.C. 2330a, the data required to be collected under the statute includes service contracts and orders that contain firm fixed-prices for the specific tasks to be performed. Therefore, firm fixed-price contracts for the applicable services are not exempt under the proposed rule.

Comment: One respondent recommended that the rule exempt DoD intelligence community agency contracts, because the existing exemption for ''classified services'' is not sufficient to cover the exempt contracts entered into by DoD intelligence community agencies.

Response: The statute does not provide for exemptions to the reporting requirement; therefore, the proposed rule does not provide for exemptions, in order to comply with the law.

Comment: One respondent recommended that, due to the difficulty in tracking labor for service contracts where contractor employees may spend only small fractions of their time servicing the Government contract (such as refuse collection and software as a service), the rule should be changed to exempt such contracts by using the criteria similar to the Service Contract Labor Standards exemptions (see FAR 22.1003–4(d)(1)).

Response: Title 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, now limits data collection to four service acquisition portfolio groups: Logistics management services, equipment related services, knowledge-based services, and electronics and communications services. Under this proposed rule, only service contracts with a total estimated value exceeding $3 million that are for services in one of the four portfolio groups must be reported in SAM.

Comment: One respondent questioned whether Congress intended DoD to report contracts for services that are integrally related to supplies, or contracts where the services are a

relatively small dollar value in relation to the supplies.

Response: Title 10 U.S.C. 2330a requires the collection of data on ''each purchase of services by a military department or Defense Agency'' that meets a certain dollar threshold and is for certain services. The proposed rule clarifies that the requirement applies to contracts or orders that have a total estimated value, including options, exceeding $3 million and are for services in one of the four service acquisition portfolio groups.

2. Expansion of Reporting Requirement

Comment: Two respondents suggested that the ECMRA reporting requirement be extended to contracts for services valued at or below the simplified acquisition threshold (SAT). Doing so would be consistent with the congressional intent in 10 U.S.C. 2330a for DoD to provide a total inventory of contracted for services.

Response: Title 10 U.S.C. 2330a(a), as amended by section 812 of the NDAA for FY 2017, now only requires the collection of data on service contracts, under certain portfolio groups, that exceed $3 million. This proposed rule implements the statutory threshold. Applying the rule to service contracts below $3 million is not necessary to implement the statute and would impose an unnecessary burden on the public and DoD.

Comment: One respondent suggested that the final rule clarify that services provided ancillary to a lease or rental contract (such as auto repair and maintenance services incidental to a vehicle lease) are subject to ECMRA reporting requirement. The respondent also recommended that the final rule clarify that the ECMRA reporting requirements apply to contracts for destruction, demolition, and removal.

Response: Title 10 U.S.C. 2330a(a), as amended by section 812 of the NDAA for FY 2017, specifies that the service acquisition portfolio group for equipment related services is included in the required reporting group. It is expected that contracts for equipment-related services with a total estimated value, including options, exceeding $3 million will be reported in SAM.

3. Duplicative of Existing Systems

Comment: Two respondents indicated that the rule is duplicative of the existing FAR rule on service contract reporting that applies to civilian agencies (see FAR subpart 4.17). Respondents stated that there should not be two parallel systems, one for civilian agencies and another for defense agencies, because this situation causes confusion and compliance problems within industry.

Response: FAR subpart 4.17 does not apply to DoD. This proposed rule enables DoD to fulfill its obligation under 10 U.S.C. 2330a. Since publication of the proposed rule under 2012–D051, DoD has adopted the use of FPDS to collect a majority of the required data, in an effort to standardize the reporting process for contractors across the Federal Government.

Comment: Several respondents suggested that the ECMRA system is duplicative of other Government systems, such as FPDS, which can also be used to estimate the data provided in the annual inventory of contracts for services.

Response: DoD has adopted the service contract reporting process used by other Federal agencies and no longer require contractor reporting in ECMRA. This proposed rule will enable DoD to use FPDS to obtain a majority of the information required by 10 U.S.C. 2330a. FPDS does not provide data on the direct labor hours expended and dollar amounts invoiced for contracted services. Therefore, this proposed rule requires applicable contractors to enter the labor hours and dollar amounts in SAM, which is the process used by other Federal agencies, in accordance with FAR subpart 4.17.

Comment: Two respondents suggested that the separate instances of ECMRA (Army, Navy, Air Force, and other DoD agencies) be combined into one DoD-wide ECMRA system.

Response: The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM.

Comment: Two respondents suggested that the rule is duplicative of existing DoD reporting requirements, such as: (1) The Army's contractor manpower reporting requirement; and (2) the Secretary of Defense Memorandum entitled ''Enterprise-wide Contractor Manpower Reporting Application,'' dated November 2012, that requires all new contracts for services to include a contract line item for contractor manpower reporting and a requirement in the performance work statement for contractor manpower reporting.

Response: This rule will replace, not duplicate, the existing Army contract manpower reporting requirement and the requirements in the November 2012 Memorandum from the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Acting Principal Deputy Under Secretary of Defense for Personnel and Readiness.

Comment: Two respondents suggested that the rule exceeds the scope of congressional intent, because DoD is already using its internal records and systems to achieve the statutory objective of the inventory of contracts for services.

Response: The rule does not exceed the scope of congressional intent, because existing systems and reports do not fully capture all of the data required by 10 U.S.C. 2330a.

4. Flow Down to Subcontracts

Comment: Two respondents suggested that the requirement for subcontract reporting be changed. One respondent suggested that the prime contractor be required only to flow down the clause to subcontractors and relieved of the responsibility of reporting for subcontractors. The other respondent suggested that subcontractor data not be reported at all, as this is inconsistent with commercial practice.

Response: The proposed rule does not contain a requirement to flow down a clause. Instead, this proposed rule requires contractors to include its subcontractor labor hours in the total number of labor hours the contractor reports annually to SAM. The proposed rule leaves the process for collecting subcontractor data up to the discretion of each contractor.

5. Need for Additional Resources

Comment: One respondent suggested that more resources be provided to the Office of the Under Secretary of Defense for Personnel and Readiness workforce that administers and coordinates the inventory of contracts for services.

Response: This suggestion is beyond the scope of the rule.

6. ECMRA Process

Comment: One respondent noted that the ECMRA interface for the Fourth Estate (other DoD agencies and field activities) is not yet fully operational, in contrast to what is stated in the proposed rule. For example, there is no operational help desk support for Fourth Estate activities. The respondent suggests that the final rule should be delayed until ECMRA is consolidated into a common portal for all DoD agencies, or until the ECMRA instance for Fourth Estate activities is fully resourced.

Response: The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM.

Comment: One respondent questioned how the Government validates data provided by contractors in ECMRA. The respondent suggested that ECMRA be linked to Wide Area WorkFlow and that the contracting officer or the contracting

officer's representative be allowed to inspect payroll data in order to validate contractor data entered into ECMRA.

Response: Agencies are responsible for ensuring the contractor submits information in SAM that is reasonable and consistent with available contract information. Agencies may use any contract data available, as appropriate and necessary, to meet this responsibility.

Comment: One respondent suggested that the rule be clearer about how the ECMRA will protect nonpublic data, such as direct labor hours and cost data.

Response: The use of ECMRA is no longer necessary.

Comment: One respondent requested clarification on the procedures to follow when the services under one contract support two or more DoD services or agencies.

Response: This proposed rule requires contractors to enter information in SAM, which is a single system able to collect all requisite data under this rule.

Comment: One respondent suggested that ECMRA should have a built-in capability for an overall point of contact at each agency level who can gather and manage the ECMRA information and that data be gathered at a centralized location.

Response: The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM, which is a Governmentwide system.

Comment: One respondent noted that it is unduly restrictive to allow only one contractor user per contract to view the data for that contract in ECMRA.

Response: The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM.

Comment: One respondent suggested that the rule should clarify the contractor's responsibilities in the event that the Government-populated information in ECMRA is incorrect.

Response: The use of ECMRA is no longer necessary. This proposed rule requires contractors to enter information in SAM. Contractors may contact the SAM Helpdesk or the contracting officer in the event that data needs to be updated in SAM.

Comment: One respondent suggested that the requiring activity, and not the contracting officer, be responsible for verifying the contractor's ECMRA compliance is documented.

Response: In accordance with FAR 1.602–2, the contracting officer is responsible for ensuring compliance with the terms of the contract.

Comment: A respondent suggested that a DD Form 1423, Contract Data Requirements List, be included as a requirement in the rule.

Response: The proposed DFARS clauses convey the requirement for contractor reporting to SAM; therefore, a DD Form 1423 is not necessary.

7. Proposed Clause Changes

Comment: One respondent requested clarification regarding the prescription for the clause at DFARS 252.237–70XX with regard to indefinite-delivery, indefinite-quantity contracts. The respondent asked whether the clause must be included only if the expected dollar value of the individual task or delivery orders will exceed the SAT or if the total dollar value of all the task or delivery orders issued under the contract will exceed the SAT.

Response: The rule requires information reporting on each task order that meets the criteria and threshold for service contract reporting. The proposed rule does not require reporting at the contract level for indefinite-delivery contracts. The rule proposes a basic clause that applies to solicitations, contracts (other than indefinite-delivery contracts), and task orders awarded under non-DoD indefinite-delivery contracts; and an alternate clause that applies to DoD issued solicitations and contracts for indefinite-delivery type contracts. The basic clause and the alternate clause implement the reporting requirement for contracts and/or task orders that have a total estimated value, including options, exceeding $3 million and are for services in the four specified service acquisition portfolio groups. The basic clause advises contractors to report on the effort performed under the contract or the task order awarded under a non-DoD contract. The alternate clause advises the contractor to report on the effort performed under each task order awarded under a DoD indefinite-delivery contract that meets the criteria and threshold for service contract reporting.

Comment: One respondent suggested that the rule include a link to the product service code (PSC) manual available at *www.acquisition.gov,* to aid contracting personnel in determining the types of services to which the proposed rule applies or does not apply.

Response: The applicable PSCs will be identified in the DFARS Procedures, Guidance, and Information upon publication of the final rule.

Comment: One respondent suggested that the rule require the contracting officer to prepare a determination designating specifically the services to which the ECMRA reporting requirement would apply.

Response: It is not necessary for the contracting officer to prepare such a determination or provide further clarification to the contractor. This proposed rule only applies the requirement to report in SAM, via the DFARS clause, to those contracts and orders that meet the thresholds and criteria for service contract reporting, as expressed in 10 U.S.C. 2330a.

8. Definition Clarification

Comment: One respondent noted that many terms, including ''direct labor hours'' and ''cost data,'' are not defined in the proposed rule.

Response: This proposed rule only uses the term ''direct labor hours,'' which is defined in FAR 2.101.

Comment: Two respondents recommended that the term ''services'' be better defined for the purposes of informing both the Government and contractor when the proposed rule applies and when the contractor is responsible for entering data into ECMRA.

Response: This proposed rule only applies the requirement to report in SAM, via the DFARS clause, to those contracts and orders that meet or are expected to meet the thresholds and criteria for service contract reporting, as expressed in 10 U.S.C. 2330a. When awarded a contract, or task order placed under a non-DoD contract, this rule proposes a basic clause to notify contractors of the requirement to report in SAM on the effort performed under the award. When awarded an indefinite-delivery contract under which orders will be placed that may meet the thresholds and criteria for service contract reporting, this rule proposes an alternate clause to notify contractors of the requirement to report in SAM on the effort performed for a task order issued under the contract that meets the service contract reporting thresholds and criteria.

9. Major Rule

Comment: One respondent suggested that the Government reconsider whether this is a major rule. Title 5 U.S.C. 804 defines a major rule as one which the Office of Management and Budget (OMB) determines will cause a major increase in costs or prices for individual industries, or have a significant adverse effect on competition, employment, investment, productivity, or innovation. This rule imposes new reporting requirements, particularly for commercial item contractors that provide professional services and supplies. These contractors would not have been previously subject to the type of manpower reporting required by this

rule. For small businesses, the need to build compliant procedures and automated systems could be a barrier to participating in the federal market. This is particularly the case when the cumulative effect of multiple and duplicative data reporting requirements is considered. The ultimate result over time will be a decrease in competition and innovation in the Federal market.

Response: This rule is not a major rule in that it does not have a significant impact on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete with foreign enterprises. Similar reporting requirements for civilian agencies have appeared in FAR subpart 4.17 since 2014, so many contractors already have experience with this type of reporting requirement. The scope of this rule has been decreased, because 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, limits data collection to four service acquisition portfolios and applies only to contracts and task orders exceeding $3 million in total estimated value, including options.

10. Initial Regulatory Flexibility Analysis

Comment: Two respondents stated that the proposed reporting system did not have a goal of minimizing the burden to small business and that the constant flow of new regulations to businesses have little regard for the benefit to the Government or burden on businesses.

Response: The burden applied to small businesses is the minimum consistent with applicable laws, Executive orders, regulations, and prudent business practices. The information collection requirement has been narrowly tailored to maximize the use of existing records already maintained by contractors and by the Government. To further minimize the impact, DoD is adopting the existing system and process used by the rest of the Government to obtain the requisite information from contractors, which maintains a familiar and consistent reporting requirement for contractors; and the information is collected electronically, help-desk support and user guides are available for SAM, and reporting requirements will be limited to a small number of data elements to facilitate ease of reporting and reduce contractor burden. In addition, the NDAA for FY 2017 raised the threshold for reporting to $3 million from the SAT and limited the data reporting to four service acquisition portfolio groups.

11. Paperwork Reduction Act

a. Government Systems Already in Place

Comment: Two respondents stated that the Government has systems in place for collecting the required data and the rule would require duplicative contractor reporting that is not necessary for compliance. Two respondents noted that there will be two rules, one for DOD and the other non-DOD, which could potentially apply under a single contract vehicle and that determining which set of rules apply will be burdensome.

Response: The rule will not require duplicative reporting by contractors. The DoD and non-DoD reporting requirements are based on separate statutes. Further, the information collection requirement associated with this DFARS Case 2018–D063, once cleared by OMB, will supersede the reporting requirements approved under OMB Control Number 0704–0491, entitled ''DoD Inventory of Contracts for Services Compliance.'' Contracts awarded by DoD, or on behalf of DoD, will contain the proposed DFARS clauses.

b. Paperwork Reduction Act Constraints

Comment: One respondent stated that the rule conflicts with Paperwork Reduction Act constraints on rulemaking, namely that the rule must: (1) Be necessary for the proper performance of the agency; (2) not be duplicative of information otherwise reasonably accessible to the agency; and (3) reduce, to the extent practicable and appropriate, the burden on persons who shall provide information to or for the agency.

Response: The rule complies with the Paperwork Reduction Act. The information collection is necessary in order for DoD to meet the requirement of 10 U.S.C. 2330a, as amended, to collect certain service contract data and report annually to Congress. The rule is not duplicative of information otherwise reasonably accessible to DoD. DoD systems do not currently collect all of the data elements required by the statute.

The information collection requirement has been narrowly tailored to minimize the impact of reporting and maximize the use of existing records already maintained by contractors and by the Government. To minimize the impact, the information will be collected electronically, help-desk support will be provided to users, and reporting requirements will be limited to a small number of data elements.

c. Burden Estimates

Comment: Two respondents commented that the rule underestimates the number of contractors that will be impacted. One respondent indicated that the total estimated number of respondents of 13,269, including 7,962 for small businesses, seems low, since the GSA Schedules alone have 20,000 contractors and 80% of the contractors are small businesses. One respondent stated that the estimate for the total number of annual responses of approximately 54,000 appears low. In addition, several respondents commented that the estimate of an average of 1.4 hours per response is too low, citing reasons such as: (1) The billions of dollars in services for which DoD contracts for annually and the corresponding volume of data required to be entered, (2) the limitation of the ECMRA bulk upload capability, or (3) the impact on response time resulting from the flow down of the reporting requirement to subcontractors. One respondent stated that the burden is disproportionally high for small businesses that are less likely to have the necessary internal infrastructure.

Response: The estimated burdens for respondents and responses published in the previously proposed rule have been updated to reflect the revised requirements of 10 U.S.C. 2330a, as amended.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

A. Background

Consistent with the determinations that DoD made with regard to application of the requirements of section 846 of the NDAA for FY 2011, DoD does not intend to apply the requirements of 10 U.S.C. 2330a, as amended by section 812 of the NDAA for FY 2017, to contracts at or below the simplified acquisition threshold (SAT) or for commercially available off-the shelf items (COTS) items, but does intend to apply the rule to contracts for the acquisition of commercial items.

Section 846 of the NDAA for FY 2011 and section 812 of the NDAA for FY 2017 are silent on applicability to contracts and subcontracts in amounts no greater than the SAT or for the acquisition of commercial items. Title 10 U.S.C. 2330a(a), as amended by section 812 of the NDAA for FY 2017, however, only requires the collection of data on service contracts, under certain portfolio groups, that exceed $3 million, which effectively precludes application

to acquisitions under the SAT. Also, the statute does not provide for civil or criminal penalties. Therefore, the statute does not apply to contracts or subcontracts in amounts not greater than the SAT or to the acquisition of commercial items unless the Principal Director, Defense Pricing and Contracting, makes a written determination as provided in 41 U.S.C. 1905 and 10 U.S.C. 2375.

B. Applicability to Contracts for the Acquisition of Commercial Items, Excluding COTS Items

Title 10 U.S.C. 2375 exempts contracts and subcontracts for the acquisition of commercial items, including COTS items, from provisions of law enacted after October 13, 1994, that, as determined by the Under Secretary of Defense for Acquisition and Sustainment (USD (A&S)), set forth policies, procedures, requirements, or restrictions for the acquisition of property or services unless—

- The provision of law—
  - Provides for criminal or civil penalties;
  - Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 2533a or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 2533b; or
  - Specifically refers to 10 U.S.C. 2375 and states that it shall apply to contracts and subcontracts for the acquisition of commercial items (including COTS items); or
- USD(A&S) determines in writing that it would not be in the best interest of the Government to exempt contracts or subcontracts for the acquisition of commercial items from the applicability of the provision.

This authority has been delegated to the Principal Director, Defense Pricing and Contracting.

Consistent with 10 U.S.C. 2375, DoD has determined that it is in the best interest of the United States to apply the requirements of 10 U.S.C. 2330a to the acquisition of commercials items, excluding COTS items. The intent of the statute is to enhance DoD's ability to manage the total force, inclusive of military, civilian, and contractor personnel. Specifically, section 2330a, as amended, requires the military departments and defense agencies to ensure that the inventory of contracts for services required by the statute is used to inform strategic workforce planning decisions under 10 U.S.C. 129a and develop budget justification materials for services in accordance with 10 U.S.C. 235. An exception for services that meet the definition of a commercial item would exclude significant sums expended by DoD on contracted services intended to be covered by the law, thereby undermining the overarching public policy purpose of the law. Therefore, this rule will apply to the acquisition of commercial items, excluding COTS.

IV. Expected Cost Impact

This rule will require a contractor to report data in SAM on an annual basis for a DoD contract or task order that is valued in excess of $3 million and is for logistics management services, equipment related services, knowledge-based services, or electronics and communications services.

When applicable, contractors will be required to annually report the total dollar amount invoiced for and the total number of direct labor hours expended on services performed under the contract or task order during the preceding fiscal year. The total number of direct labor hours reported to SAM should be the total of both the contractor hours and its subcontractors' hours. Significant costs are avoided by using existing Government systems (FPDS and SAM) to collect elements of the required data.

The following is a summary of the estimated public and Government costs calculated in perpetuity in 2016 dollars at a 7-percent discount rate:

Summary	Public	Government	Total
Present Value	$10,441,186	$7,830,886	$18,272,072
Annualized Costs	730,883	548,162	1,279,045

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at *www.regulations.gov,* search for ''DFARS Case 2018–D063,'' click ''Open Docket,'' and view ''Supporting Documents.''

V. Executive Orders 12866 and 13563

Executive orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not expected to be subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

DoD does not expect this proposed rule to 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.,* because the rule only requires annual reporting of two data items for a limited number and type of service contracts. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a data collection system that provides management information on each purchase of services by a military department or defense agency in excess of $3 million for the following service acquisition portfolio groups: Logistics management services; equipment related services; knowledge-based services; and, electronics and communications services.

The objective of this proposed rule is to implement 10 U.S.C. 2330a, as modified by section 812 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328).

Based on data from the Federal Procurement Data System for FY 2016 through 2018, DoD awards annually an average of 4,386 service contracts and orders to 1,934 unique entities that have an estimated value greater than $3M and are within the four portfolio groups outlined in the rule. Of the 4,386 contracts and orders awarded annually, approximately 2,059 (47%) are made to 1,227 (63%) unique small businesses entities.

This proposed rule requires all contractors that are awarded a contract or order in excess of $3 million for services in any of the four service acquisition portfolio groups to report contract data in SAM. The contractor is required to report the total amount invoiced for services performed during the preceding fiscal year and the number of direct labor hours, including subcontractor hours, expended on services performed during the preceding fiscal year. The Government estimates that a journeyman level contractor employee with basic knowledge of the contract would be required to enter the data. The contractor employee may also need to gather additional billing information from the organization in order to complete the data input in SAM.

This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the proposed rule that would meet the requirements of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D063), in correspondence.

VIII. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning DFARS Case 2018–D063, Data Collection and Inventory for Services Contracts, to the Office of Management and Budget. Upon OMB clearance of this new collection and publication of the associated final DFARS rule, a related program clearance, OMB Control Number 0704–0491, DoD Enterprise-wide Contractor Manpower Reporting Application (ECMRA), will be discontinued.

A. Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for gathering and maintaining the data and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 1,934.

Responses per respondent: 2.267, approximately.

Total annual responses: 4,386.

Hours per response: 2 hours.

Total response burden hours: 8,772.

B. Request for Comments Regarding Paperwork Burden

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Jasmeet_K._Seehra@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, Attn: Carrie Moore OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notification, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notification.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060, or email *osd.dfars@mail.mil.* Include DFARS Case 2018–D063 in the subject line of the message.

List of Subjects in 48 CFR Parts 204, 212, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, and 252 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Add subpart 204.17, consisting of 204.1700, 204.1703, and 204.1705, to read as follows:

Subpart 204.17—Service Contracts Inventory

Sec.
204.1700 Scope of subpart.
204.1703 Reporting requirements.
204.1705 Contract clauses.

Subpart 204.17—Service Contracts Inventory

204.1700 Scope of subpart.

This subpart prescribes the requirement to report certain contracted services in accordance with 10 U.S.C. 2330a.

204.1703 Reporting requirements.

(a) *Thresholds.* (i) Service contractor reporting of information is required in the System for Award Management (SAM) when a contract or order—

(A) Has a total estimated value, including options, that exceeds $3 million; and

(B) Is for services in the following service acquisition portfolio groups (see PGI 204.1703 for a list of applicable product and service codes):

(*1*) Logistics management services.

(*2*) Equipment related services.

(*3*) Knowledge-based services.

(*4*) Electronics and communications services.

(ii) Contractor reporting is required annually, by October 31, on the services performed under the contract or order, including any subcontracts, during the preceding Government fiscal year.

(iii) For indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements—

(A) Contractor reporting is required for each order issued under the contract or agreement that meets the requirements of paragraph (a)(i) of this section; and

(B) Service contract reporting is not required for the basic contract or agreement.

(b) *Agency reporting responsibilities.* In the event the agency believes that revisions to the contractor-reported information are warranted, the agency shall notify the contractor.

204.1705 Contract clauses.

(a)(i) Use the basic or the alternate of the clause 252.204–70XX, Reporting Requirements for Contracted Services, in solicitations, contracts, agreements, and orders, including solicitations and

contracts using FAR part 12 procedures for the acquisition of commercial items, that—

(A) Have a total estimated value, including options, that exceeds $3 million; and

(B) Are for services in the following service acquisition portfolio groups—

(1) Logistics management services;

(2) Equipment related services;

(3) Knowledge-based services; or

(4) Electronics and communications services.

(ii) Use the basic clause in solicitations and contracts, except solicitations and resultant awards of indefinite-delivery contracts, and orders placed under non-DoD contracts that meet the criteria in paragraph (a)(i) of this section; or

(iii) Use the alternate I clause in solicitations and resultant awards of indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements, when one or more of the orders under the contract or agreement are expected to meet the criteria in paragraph (a)(i) of this section.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 212.301 by adding paragraph (f)(ii)(j) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ii) * * *

(j) Use the clause at 252.204–70XX, Reporting Requirements for Contracted Services, to comply with 10 U.S.C. 2330a.

(1) Use the basic clause as prescribed in 204.1705(a)(i) and (ii); and

(2) Use the alternate I clause as prescribed in 204.1705 (a)(i) and (iii).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 252.204–70XX to read as follows:

252.204–70XX Reporting Requirements for Contracted Services.

Basic. As prescribed in 204.1705(a)(i) and (ii), use the following clause:

Reporting Requirements for Contracted Services-Basic (DATE)

(a) The contractor shall report annually, by October 31, at *www.sam.gov,* on the services performed under this contract or order, including any subcontracts, during the preceding Government fiscal year (October 1–September 30).

(b) The Contractor shall report the following information for the contract or order:

(1) The total dollar amount invoiced for services performed during the preceding Government fiscal year under the contract or order.

(2) The number of Contractor direct labor hours, to include subcontractor direct labor hours, as applicable, expended on the services performed under the order or contract during the previous Government fiscal year.

(c) The Government will review Contractor reported information for reasonableness and consistency with available contract information. In the event the Government believes that revisions to the Contractor reported information are warranted, the Government will notify the Contractor. Upon notification, the Contractor shall revise the reported information or provide the Government with a supporting rationale for the information.

(End of clause)

Alternate I. As prescribed in 204.1705(a)(i) and (iii), use the following clause, which substitutes ''contract or agreement for each order'' in lieu of ''contract or order'' in paragraph (a) and ''order'' in lieu of ''contract or order'' in paragraphs (b) and (b)(1) and (2), and identifies the dollar threshold and service acquisition portfolio groups for which orders under the contract or agreement require service contract reporting.

Reporting Requirements for Contracted Services-Alternate I (DATE)

(a) The contractor shall report annually, by October 31, at *www.sam.gov,* on services performed during the preceding Government fiscal year (October 1–September 30) under this contract or agreement for each order, including any subcontract, which exceeds $3 million for services in the following service acquisition portfolio groups:

(1) Logistics management services.

(2) Equipment related services.

(3) Knowledge-based services.

(4) Electronics and communications services.

(b) The Contractor shall report the following information for the order:

(1) The total dollar amount invoiced for services performed during the preceding Government fiscal year under the order.

(2) The number of Contractor direct labor hours, to include subcontractor direct labor hours, as applicable, expended on the services performed under the order during the previous Government fiscal year.

(c) The Government will review Contractor reported information for reasonableness and consistency with available contract information. In the event the Government believes that revisions to the Contractor reported information are warranted, the Government will notify the Contractor. Upon notification, the Contractor shall revise the reported information or provide the Government with a supporting rationale for the information.

(End of clause)

[FR Doc. 2020–11754 Filed 6–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS–2019–0031]

RIN 0750–AK07

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause ''Tariff Information'' (DFARS Case 2018–D044)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 4, 2020, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D044, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2018–D044''. Select ''Submit a Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D044'' on any attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D044 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal 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. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to remove the DFARS clause 252.239–7006, Tariff Information, and the associated clause prescription at DFARS 239.7411(a). This clause is prescribed for use in solicitations, contracts, and basic agreements for telecommunications services. The clause requires the contractor to provide the contracting officer with the following information:

- Upon request, a copy of the contractor's existing tariffs.
- Before filing, a copy of any application to be made to a regulatory agency that requests new or changes to rates, charges, services, or regulations related to any tariff or to any of the facilities or services furnished primarily to the Government.
- Upon request, all supporting documentation prepared in connection with any application to a regulatory agency.
- Notice of any application that anyone other than the contractor files with a regulatory body which affects or will affect the rate or conditions of services under the agreement or contract.

This clause was added to the DFARS to implement a standardized approach across DoD for addressing critical issues associated with the acquisition of telecommunication services. Since its implementation, technological advances, and the passage of additional telecommunication regulations at 47 CFR 42.10, have made this DFARS clause unnecessary. Pursuant to 47 CFR 42.10, telecommunications carriers are now required to make tariff and non-tariff information available to the public online at the carrier's internet website and to update the information regularly. Additionally, online databases and tools have been created to track and monitor changes in telecommunications tariffs, prices, and services. Since contracting officers are now able review carriers' websites and access online tariff tools and databases as needed, it is unnecessary and burdensome to require the contractor to provide this information separately to the contracting officer in accordance with the clause. As such, this DFARS clause can be removed.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. Public notification of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 28041 on June 20, 2017 (see also 82 FR 35741 (August 1, 2017)), and requested public input. No public comments were received on this clause. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.239–7006, Tariff Information, and determined that the DFARS coverage was unnecessary and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes obsolete DFARS clause 252.239–7006, Tariff Information. Therefore, the rule does not impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

III. Expected Cost Savings

This rule impacts only telecommunication service providers who do business, or want to do business, with DoD. DFARS clause 252.239–7006, Tariff Information, requires telecommunications service contractors to submit certain tariff and non-tariff information to DoD when requested by the contracting officer or as specified in the clause. Removal of this DFARS clause is expected to result in savings for both DoD and DoD contractors that provide telecommunications services.

The following is a summary of the estimated public and Government cost savings:

Summary	Public	Government	Total
Present Value	−$1,624,014	−$406,000	−$2,030,014
Annualized Costs	−113,681	−28,420	−142,101

To access the full Regulatory Cost Analysis for this rule, go to the Federal eRulemaking Portal at *www.regulations.gov,* search for ''DFARS Case 2018–D044,'' click ''Open Docket,'' and view ''Supporting Documents.''

IV. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is expected to be an E.O. 13771 deregulatory action. We estimate that this rule generates $2.03 million in annualized cost savings, discounted at 7 percent relative to year 2016, over a perpetual time horizon. Details on the estimated cost savings can be found in section III. of this preamble.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to 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.,* because the rule only applies to major weapon system acquisition programs. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a recommendation from the DoD Regulatory Task Force established pursuant to Executive Order 13777, Enforcing the Regulatory Reform Agenda, to repeal the clause at DFARS 252.239–7006, Tariff Information, and the associated clause prescription at DFARS 239.7411(a).

The objective of this rule is to remove the requirement for contractors to report

tariff information under the DFARS clause. The legal basis for this change is 41 U.S.C. 1303.

According to the Electronic Document Access database, DoD awards approximately 855 contracts to 83 unique contractors each year that include DFARS clause 252.239–7006. It is estimated that 171 of those contracts are awarded to small entities.

This proposed rule does not include any new reporting or recordkeeping requirements for small entities. Rather this rule reduces the information collection requirements approved under OMB Control Number 0704–0341. Small entities will no longer be required to provide tariff information to the contracting officer in accordance with DFARS clause 252.239–7006.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the policy objective of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D044), in correspondence.

VII. Paperwork Reduction Act

This rule affects the information collection requirements in the DFARS provision 252.239–7006, Tariff Information, currently approved under OMB Control Number 0704–0341, entitled ''Defense Federal Acquisition Regulation Supplement (DFARS) Part 239, Acquisition of Information Technology and associated clauses at DFARS 252.239–7000 and 252.239–7006.'' The rule revises an information collection requirement, which requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request to OMB for approval of a revised information collection.

A. Public Reporting Burden

Public reporting burden for this previously approved collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule proposes to eliminate DFARS 252.239–7006, Tariff Information, thereby reducing the associated current annual reporting burden and OMB inventory of hours as follows:

Respondents: 83.

Responses per respondent: Approximately 10.3.

Total annual responses: 855.

Hours per response: 2 hours.

Total response Burden Hours: 1,710.

Request for Comments Regarding Paperwork Burden Reduction. Written comments and recommendations on the proposed reduction of this information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Susan_M._Minson@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, Attn: Carrie Moore; OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notification, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notification.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060, or email *osd.dfars@mail.mil.* Include DFARS Case 2018–D044 in the subject line of the message.

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 239 and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

239.7411 [Amended]

■ 2. Amend section 239.7411 by removing paragraph (a)(3) and redesignating paragraph (a)(4) as paragraph (a)(3).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.239–7006 [Removed and Reserved]

■ 3. Remove and reserve section 252.239–7006.

[FR Doc. 2020–11753 Filed 6–4–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS–HQ–MB–2019–0103; FF09M29000–201–FXMB1232090000]

RIN 1018–BE67

Migratory Bird Permits; Management of Conflicts Associated With Double-Crested Cormorants (Phalacrocorax auritus) Throughout the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to establish a new permit for State and federally recognized Tribal (hereafter ''Tribe'' or ''Tribal'') wildlife agencies for the management of double-crested cormorants (*Phalacrocorax auritus;* hereafter ''cormorants''). The new permit would authorize specific take activities that are normally prohibited and are intended to relieve or prevent impacts from cormorants on lands within State or Tribal jurisdictions to address conflicts related to the following issues: wild and publicly stocked fish stocked by State agencies or Tribes; Tribal- and State-owned or operated aquaculture facilities (including hatcheries); human health and safety; State- or Tribal-owned property and assets; and threatened and endangered species (listed under the Endangered Species Act of 1973, as amended, or identified in State- or Tribal-specific legislation as threatened or endangered). The Service would retain ultimate authority for regulating the take of cormorants. States and Tribes would have the discretion to determine whether, when, where, and for which of the above purposes they would conduct lethal take within limits and allocations set by the Service.

DATES: You must submit written comments on this proposed rule by July 20, 2020.

Information Collection Requirements: If you wish to comment on the information collection requirements in

this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after the date of publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by July 6, 2020.

ADDRESSES: *Comment Submission:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–HQ–MB–2019–0103.
- *U.S. Mail Or Hand-Delivery:* Public Comments Processing, Attn: FWS–HQ–MB–2019–0103; U.S. Fish and Wildlife Service; MS: PRB (JAO/3W); 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide (see Review of Public Comments, below, for more information).

Document Viewing: Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2019–0103, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 5275 Leesburg Pike, Falls Church, Virginia.

Information Collection Requirements: Send your comments and suggestions on the information collection requirements by the date indicated above in **DATES** to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference OMB Control Number 1018—Cormorants in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (202) 208–1050.

SUPPLEMENTARY INFORMATION:

Background

The Service is the Federal agency delegated with the primary responsibility for managing migratory birds. Our authority derives from the Migratory Bird Treaty Act of 1918 (MBTA; 16 U.S.C. 703–712), as amended, which implements conventions with Great Britain (for Canada), Mexico, Japan, and Russia. We implement the provisions of the MBTA through the regulations in parts 10, 13, 20, 21, 22, and 92 of title 50 of the Code of Federal Regulations (CFR). The MBTA protects migratory birds (listed in 50 CFR 10.13) from take directed at birds, except as authorized under the MBTA. Regulations pertaining to specific migratory bird permit types are at 50 CFR parts 21 and 22.

The double-crested cormorant is a fish-eating migratory bird that is distributed across a large portion of North America. There are five different breeding populations, variously described by different authors as the Alaska, Pacific (or Western), Interior, Atlantic, and Southern populations. Although these populations are described by their breeding ranges, the birds commingle to various extents on their migration and wintering areas, with birds from populations closer to each other overlapping more than those that are more distant.

Cormorant populations have increased over both the short term (2005–2015) and long term (1966–2015) (Sauer et al. 2017). Permits issued by the Service to take birds are one method available to reduce conflicts. However, prior to applying for permits to take cormorants, individuals and entities experiencing conflicts with cormorants should attempt nonlethal techniques (*e.g.,* hazing, habitat modification) to alleviate the conflict. Nonlethal techniques combined with lethal take should be more effective and may ultimately result in less need for lethal take in the future.

In response to ongoing damage at aquaculture facilities and other damage and conflicts associated with increasing cormorant populations, the Service administered regulations that included, in addition to Depredation Permits (located at 50 CFR 21.41), an Aquaculture Depredation Order (which was located at 50 CFR 21.47) beginning in 1998 and a Public Resource Depredation Order (which was located at 50 CFR 21.48), which began in 2003. Both of these regulations were in place until May 2016 when they were vacated by Court order (see more below).

The Aquaculture Depredation Order eliminated individual permit requirements in 13 States for private individuals, corporations, State agencies, and Federal agencies taking cormorants at aquaculture facilities. The Public Resource Depredation Order enabled States, Tribes, and the U.S. Department of Agriculture's Wildlife Services in 24 States, without individual depredation permits, to take cormorants found committing or about to commit, and to prevent, depredations on the public resources of fish (including hatchery stock at Federal, State, and Tribal facilities), wildlife, plants, and their habitats.

In May 2016, these depredation orders were vacated by the United States District Court for the District of Columbia. The Court concluded that the Service did not sufficiently consider the effects of the depredation orders on cormorant populations and other affected resources and failed to consider a reasonable range of alternatives in the review within the environmental assessment (EA) issued in 2014 under the National Environmental Policy Act of 1969, as amended (NEPA). Following the Court ruling, the Service prepared an EA to address continuing conflicts with cormorants (USFWS 2017). The authority for authorizing lethal take of depredating cormorants reverted to the issuance of individual depredation permits pursuant to 50 CFR 21.41. Under the 2017 EA, cormorants could lethally be taken only to address conflicts with aquaculture, human health and safety, threatened and endangered species (as listed under the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*) and State-listed species of management concern, and personal property (under the 2017 EA, take of cormorants to protect wild and publicly stocked fisheries would only be allowed if to protect threatened or endangered species).

Conflicts in aquatic systems continue to exist between cormorants and fish stocks managed by Federal, State, and Tribal agencies as recreational and/or commercial fisheries. Conflicts also exist between cormorants and conservation of other species and habitats in some areas. As fish-eating birds, cormorant predation of fish occurs not only at aquaculture facilities, but also in private recreational ponds and large aquatic ecosystems. While conflicts exist between cormorants and some stakeholders, birders and other interested parties value cormorants for their aesthetic and existential values.

The Service is responsible for balancing the lethal take of cormorants to alleviate conflicts where available data support such take and maintaining sustainable populations of cormorants and minimizing the regulatory burden on Federal and State agencies, Tribes, and individual citizens. In making decisions, the Service strives to use an

effective and transparent decision-making process that ensures input from migratory bird and fisheries management programs and other stakeholders, fulfills requirements under NEPA, and addresses key biological uncertainties. When determining allowable take, the Service must consider uncertainty related to cormorant population dynamics, estimated maximum sustainable lethal take, and risk of over-exploitation. Furthermore, the Service must identify monitoring requirements that could be used to assess the effects of lethal take on cormorant populations and to ensure take is commensurate with population status. Monitoring can also improve future decisions regarding allowable take and how that allowable take could be determined. States, Tribes, and other stakeholders can provide assistance and information. The Service will formally convene meetings with the flyways and other relevant stakeholders to develop a specific cormorant population monitoring plan. This plan will be made public within approximately one year of publication of the final rule.

History of Management and Conflicts

Cormorants are migratory waterbirds protected by the MBTA. They are native to North America and range widely across the continent, typically inhabiting wetlands and adjacent upland habitats. Cormorants also are found in some human-modified environments including airport airfields and aquaculture ponds. The bird-management community generally accepts that there are five different breeding populations, variously described by different authors as Alaska, Pacific (Western), Interior, Atlantic, and Southern populations.

Cormorant abundance in North America has increased dramatically since the 1960s and 1970s, mostly due to the growth of the Interior and Atlantic populations. The current estimate of cormorant abundance in the continental United States and Canada is 872,455 to 983,188 birds (USFWS 2020).

Prior to 1998, the sole method for authorizing the lethal take of depredating cormorants to alleviate damage and conflicts was through the issuance of depredation permits pursuant to 50 CFR 21.41, which allows the take of migratory birds that are injuring ''crops or other interests.'' In 1998, the Service published a final rule (63 FR 10550–10561, March 4, 1998) establishing a depredation order that authorized commercial freshwater aquaculture producers in 13 States to take cormorants without the need for a depredation permit when cormorants were found committing or about to commit depredations on aquaculture stocks. That rule was located at 50 CFR 21.47. The Service continued to issue depredation permits to address damage and conflicts to property, natural resources, and threats to human health and safety pursuant to 50 CFR 21.41. Any individual or entity conducting lethal take of cormorants under depredation permits or the depredation order was required to submit a report detailing the take to the Service annually.

The increase in cormorant abundance across areas of North America and the subsequent range expansion of cormorants has been well documented along with concerns of the negative impacts associated with the expanding population (*e.g.,* Taylor and Dorr 2003, Hunter et al. 2006, Atlantic Flyway Council and Mississippi Flyway Council 2010, Pacific Flyway Council 2012). In response to increasing requests for depredation permits to alleviate damage and conflicts associated with cormorants, the Service issued a Final Environmental Impact Statement (FEIS) pursuant to NEPA and made changes to the regulations governing the take of cormorants in 2003. The 2003 FEIS considered direct, indirect, and cumulative effects of alternatives for cormorant management in the United States and discussed mitigating measures. In October 2003, based on analysis in the FEIS and review of public and agency comments, the Service published a final rule and notice of record of decision (68 FR 58022–58037, October 8, 2003) that modified the existing depredation order for aquaculture facilities (previously located at 50 CFR 21.47). The regulations became effective in November 2003. The modified depredation order for aquaculture facilities eliminated the need for private individuals, corporations, State agencies, and Federal agencies to obtain a depredation permit to take cormorants at aquaculture facilities in 13 States. It also authorized U.S. Department of Agriculture/Wildlife Services' employees to take cormorants at roost sites in the vicinity of aquaculture facilities during October, November, December, January, February, March, and April.

That final rule in 2003 also established a depredation order that authorized Federal agencies, State fish and wildlife agencies, and Tribes in 24 States to take cormorants to reduce damage and conflicts with public resources without the need for a depredation permit. At that time, the Service defined a public resource as a natural resource managed and conserved by public agencies, which included fish (*i.e.,* free-swimming fish and stocked fish at Federal, State, and Tribal hatcheries that are intended for release in public or Tribal waters), wildlife, plants, and their habitats. The depredation order for public resources was previously located at 50 CFR 21.48. As with previous regulations, any individual or entity conducting lethal take of cormorants under depredation permits or the depredation orders was required to submit a report detailing the take to the Service annually.

To evaluate the potential effects on the cormorant population from the implementation of the two depredation orders, a mitigating measure required by the 2003 FEIS was to review and renew, if warranted, the two depredation orders every 5 years. Subsequently, the Service developed an EA pursuant to NEPA in 2009 and again in 2014 that determined that a 5-year extension of the expiration date of the two depredation orders would not threaten cormorant populations and that activities conducted under the two depredation orders would not have a significant impact on the human environment. Therefore, from October 2003 through May 2016, the Service authorized the take of cormorants pursuant to the two depredation orders (which covered certain States), through the issuance of depredation permits for activities in States not addressed in the two depredation orders, and through the issuance of scientific collecting permits (50 CFR 21.23).

Since the Court's vacating of the depredation orders in May 2016 as discussed above, the Service has been reviewing and issuing individual depredation permits in the central and eastern lower 48 States pursuant to two separate analyses conducted under NEPA. Individuals or entities apply for these permits to address site-specific conflicts, and each application is logged, evaluated, and acted upon (approved or rejected) on a case-by-case basis based on the merits of the permit application.

The 2017 EA (USFWS 2017) evaluated issuing depredation permits to take cormorants for specific circumstances across 37 central and eastern States and the District of Columbia. The selected alternative (Reduced Take Alternative) authorized the average annual take that occurred during 2010–2015 (51,571 birds). This amount was well below the allowable level resulting from the take analyses included in the EA (82 FR 52936–52937, November 15, 2017). In December 2019, in response to requests for increased

take to alleviate growing conflicts, the Service issued a notice (84 FR 69762–69762, December 19, 2019) that it would implement a different proposed alternative analyzed in the 2017 EA (Potential Take Limit Alternative) that had a higher annual take threshold, increasing the take of cormorants authorized by permits to 74,396.

Management of cormorants in the western United States (Western population, *P. albociliatus*) is also through site-specific, case-by-case permits. The Service authorizes take of Western population cormorants primarily to reduce predation-related losses by cormorants of federally threatened or endangered juvenile salmon (*Oncorhyncus* spp.) and steelhead (*O. mykiss*) migrating to the Pacific Ocean. Additional authorizations for take occur at Federal, State, and Tribal hatcheries rearing federally threatened or endangered fish species, to protect aquaculture facilities, and for removing nests related to infrastructure maintenance. The U.S. Army Corps of Engineers' *Double-crested Cormorant Management Plan to Reduce Predation of Juvenile Salmonids in the Columbia River Estuary—Final Environmental Impact Statement* (FEIS; USACE 2015) guides management activities related to cormorant take. The National Oceanographic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) had previously determined that a reduced cormorant population of 5,380 to 5,939 breeding pairs on East Sand Island in the Columbia River Estuary would restore juvenile steelhead survival to the environmental baseline levels (NOAA Fisheries 2014), and the Service authorized lethal take at levels that attempt to achieve that colony abundance. Specifically, the Service authorized approximately 2,300 cormorants to be lethally taken each year under depredation permits, scientific collecting permits, and special purpose permits.

The Service expects the number of conflicts to increase, and we expect that demand for authorizations to take cormorants will continue to increase as a means to reduce those conflicts in the future. For example, between 2007 and 2018, the number of permit requests to take depredating birds (exclusive of requests to act under the depredation orders) increased from slightly less than 200 to almost 300 (USFWS, unpublished data), and the number of cormorants taken annually between 2004 and 2015 increased from about 42,000 to 66,500 (USFWS 2017: 50 CFR 21.24, 21.41, 21.47, and 21.48 authorizations only). As requests to take cormorants increase, the use of only depredation permits to address conflicts will become increasingly time-consuming and cumbersome, and will be less responsive to needs of those seeking relief from conflicts with cormorants.

Estimating Allowable Take

To alleviate conflicts with cormorants, we propose using a method called Potential Take Level (PTL) analyses (Wade 1998, Runge et al. 2004) to determine the number of cormorants that may be taken while maintaining the species (and breeding populations) at sustainable levels. This process has been used to determine allowable take levels for cormorants in a previous EA (USFWS 2017) and for other species, including several bird species (*e.g.,* USFWS 2009, Runge et al. 2009, Johnson et al. 2012, Zimmerman et al. 2019). Methods used to determine population sizes and allowable take levels in this proposed rule are detailed in USFWS (2020; Draft Environmental Impact Statement: Management of conflicts associated with double-crested cormorants). The median amount of allowable take resulting from the analysis was 163,219 birds annually. However, we recommend being more conservative and allowing take only up to the lower 20 percent of the distribution of the PTL annually (123,157 birds). Population-specific recommended levels of take are: Atlantic, 35,938; Interior, 77,050; Western, 8,881; and Southern, 1,288. At those levels of take, the continental population of double-crested cormorants is expected to average about 815,000 birds.

This proposed rule would bring all populations of double-crested cormorants under a common assessment framework to determine allowable levels of take. However, levels of take for each population could differ based on their current abundances, population biology, and population-specific management objectives.

Proposed Special Double-Crested Cormorant Permit

The Service proposes to add a new permit option under 50 CFR part 21 (Special Double-Crested Cormorant Permit) that would be available to State and Tribal wildlife agencies in the 48 contiguous United States to manage conflicts specifically associated with double-crested cormorants. The special permit would be available only to a State or Tribal wildlife management agency responsible for migratory bird management on lands under their jurisdiction. Under this permit, the Service would authorize State and Tribal wildlife agencies to conduct lethal take of double-crested cormorants that is normally prohibited on lands within their respective jurisdictions. The Service will issue this permit only when it is expected to reduce conflicts involving depredation at State- and Tribal-owned or operated aquaculture facilities (including hatcheries); impacts to health and human safety; impacts to threatened and endangered species (as listed under the Endangered Species Act of 1973) and listed species identified in State- or Tribal-specific legislation as threatened or endangered; damage to State- or Tribal-owned property and assets; and depredations of wild and publicly stocked fish stocked by State agencies or Tribes. Those States and Tribes not wishing to obtain this new permit could apply for depredation permits (50 CFR 21.41) to address conflicts with cormorants. However, under the scope of the November 2017 EA, these permits do not authorize take of cormorants to reduce or prevent conflicts with wild and publicly stocked fisheries (except for threatened or endangered species).

The Service would retain overall authority for the take of double-crested cormorants to ensure that levels of take are consistent with management objectives. States and Tribes must use nonlethal methods, and determine that those methods are ineffective, before lethally taking double-crested cormorants. Lethal management should be considered as part of an integrated approach to managing cormorant conflicts and used only when other methods fail to resolve conflicts. No permit is required merely to scare or herd migratory birds other than threatened or endangered species or bald or golden eagles (see 50 CFR 21.41). The Service would periodically determine the population-specific numbers of double-crested cormorants that could be taken lethally during a specified number of years in efforts to reduce conflicts while sustaining cormorant abundances, and would track authorized take through permits issued to States and Tribes to ensure take does not exceed those levels specified in the PTL. The annual allocation of take to States and Tribes would be based on recent demand by those entities and adjusted as needed (while remaining at or below population-specific allowable take levels) to respond to spatial and temporal changes in population status and the need to reduce conflicts in specific regions. The Service will prepare reports periodically, as necessary, to provide the public with

information regarding the take of cormorants and the extent to which this permit, along with other management tools (*e.g.,* depredation permits per 50 CFR 21.41), is achieving management objectives.

The special double-crested cormorant permit would be subject to the following conditions/restrictions:

1. States and Tribes must use nonlethal methods, and determine that those methods are ineffective, before lethally taking double-crested cormorants. States and Tribes and their subpermittees must make efforts to avoid disturbance to co-nesting species. Existing research findings and publications detailing appropriate methods and/or models for reducing conflicts should be used to justify activities.

2. A permit under this section does not authorize the taking of any other migratory bird, including other species of cormorants; the disturbance of bald or golden eagles; or the take of any species listed under the Endangered Species Act as threatened or endangered. If these impacts to other migratory bird species or to threatened and endangered species are likely to occur, the permittee must obtain permits specifically authorizing those activities (*i.e.,* additional migratory bird, Eagle Act and/or threatened and endangered species permits).

3. Actions under the permit may be conducted during any time of the year on lands under the jurisdiction of the State or Tribe, but only when cormorants are committing or are about to commit depredations at Tribal- and State-owned or operated aquaculture facilities (including hatcheries); to alleviate impacts to health and human safety; reduce impacts to threatened and endangered species (as listed under the Endangered Species Act) and listed species identified in State- or Tribal-specific legislation as threatened or endangered; and to prevent damage to State- or Tribal-owned property and assets. This permit would also apply to the reduction and prevention of depredations of wild and publicly stocked fish stocked by State agencies or Tribes when supported by information that take would reduce such conflicts. Permits will be issued annually. Permittees will be required to submit an annual report by December 31 each year detailing the amount of lethal take that occurred under their permit and for what purpose the take was conducted.

4. Anyone undertaking lethal control with a firearm must use nontoxic shot or nontoxic bullets (50 CFR 20.21). However, this prohibition would not apply if an air rifle or an air pistol is used.

5. Individuals conducting lethal control may not use decoys, calls, or other devices or bait to lure birds within gun range.

6. Methods of take are at the discretion of the permittee responsible for the action. Methods may include, but are not limited to, firearms, traps, egg and nest manipulation, and other techniques that are consistent with accepted wildlife damage management programs. Only 100 percent corn oil, a substance exempted from regulation by the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, may be used to oil eggs.

7. States and Tribes and their employees and subpermittees may possess, transport, and otherwise dispose of double-crested cormorants taken. Double-crested cormorants killed and nests/eggs destroyed under the authority of this permit must be properly disposed of, including donation to public museums or public scientific and educational institutions for exhibition, scientific, or educational purposes, or buried or incinerated. This permit does not allow for birds or their parts or nests/eggs to be sold, offered for sale, bartered, or shipped for the purpose of sale or barter.

8. The State or Tribe must also require the property owner or occupant on whose premises the State or Tribe is conducting activities to allow, at all reasonable times, including during actual operations, free and unrestricted access to any Service special agent or refuge officer, State or Tribal wildlife or deputy wildlife agent, warden, protector, or other wildlife law enforcement officer on the premises where they are, or were, conducting activities.

9. States and Tribes may designate subpermittees who must operate under the conditions of the permit.

10. Any employee or subpermittee authorized by the State or Tribe to carry out actions under the special permit must retain in their possession a copy of the State's or Tribe's permit while carrying out any action.

11. Any State or Tribal agency, when exercising the privileges of this permit, must keep records of all activities, including those of subpermittees, carried out under the authority of the special permit. Prior to any permit renewal, the Service will require an annual report detailing the activities conducted under the permit and the numbers of cormorants/nests/eggs lethally taken, treated, or destroyed.

12. Nothing in the permit should be construed to authorize the take of cormorants, their eggs, or nests contrary to any State or Tribal law or regulation or on any Federal land without written authorization by the appropriate management authority. Further, none of the privileges granted under the permit shall be exercised without any State or Tribal permit that may be required for such activities.

13. The Service reserves the authority to immediately suspend or revoke any permit if the Service finds that the terms and conditions set forth in the permit have not been adhered to, as specified in 50 CFR 13.27 and 13.28.

Since November 2017, permits have been available only to address conflicts with aquaculture, human health and safety, threatened and endangered species, and personal property; take of cormorants to protect wild and publicly stocked fisheries has not been authorized unless warranted to protected threatened or endangered species. The conflicts with stocked fisheries are increasingly causing concerns with State and Federal wildlife agencies, particularly those involved with providing recreational fishing opportunities. As cormorant abundance increases, and even at current levels, the issuance of individual depredation permits to address conflicts is becoming increasingly time-consuming and lengthy in some cases. With the proposed special double-crested cormorant permit, which increases the flexibility of States and Tribes to address issues and also expands the scope of conflicts that can be addressed to wild and publicly stocked fish, the Service expects that efforts to reduce those conflicts will increase, including lethal take of birds, nests, and eggs. Localized abundances of cormorants may decline as a result of these efforts, but regional and continental populations are not likely to be negatively impacted.

The Service expects that, by allowing States and Tribes to address conflicts through a special permit, more aggressive management activities will result. By authorizing conflict-management activities at the State or Tribal level, instead of at the Service Regional level, management activities would be more responsive and timely than is currently the case. Quicker resolution of conflicts ultimately may result in fewer complaints regarding cormorants. However, in expanding authority given to the States and Tribes via this permit, workload burdens may shift with more being borne by the States and Tribes and less by the Service.

Importantly, reducing the abundance of double-crested cormorants is not the goal of the Service or this proposed management action. Reducing their overall abundance does not guarantee that conflicts in specific areas will decrease. If cormorants are attracted to an area due to food resources, nesting habitats, or other factors, those places will remain attractive regardless of the size of the cormorant population and may still experience damage to the resources. Rather, the goal of the Service is to reduce the number of conflicts with cormorants by combining lethal and nonlethal methods and allowing the lethal take of cormorants only when supported by information that such take would reduce conflicts. As a consequence, abundance of cormorants in some areas may be reduced, but regional and continental populations will be managed at sustainable levels, albeit at somewhat reduced abundances. The Service also wants to ensure accountability not only in determining allowable take, but also in reporting of actual take by permittees. We will annually review reports submitted by permit holders and will periodically assess the overall impact of this permit program to ensure compatibility with long-term conservation of double-crested cormorants. The Service believes our proposed approach results in the transparency and accountability necessary to make informed decisions about and promote adherence to authorized levels of take.

Public Comments

On January 22, 2020 (85 FR 3601–3603), the Service published an advance notice of proposed rulemaking (ANPR) and announced our intent to prepare a NEPA document indicating that the Service intended to establish new regulations regarding the management of double-crested cormorants. The comment period for the ANPR continued through March 9, 2020. The ANPR listed possible alternatives composed of the following:

(1) Establish a new permit for State and Tribal wildlife agencies for authorizing certain cormorant management and control activities;

(2) Establish an aquaculture depredation order; and

(3) Both (1) and (2) in combination.

We also announced that several public scoping meetings would be held, and that specific dates and times for the public meetings would be available on the internet at *https://www.fws.gov/birds/management/managed-species/double-crested-cormorants.php.* A total of four public scoping webinars were convened, two on February 11, 2020, and two on February 12, 2020. Additionally, we conducted two webinars provided only to Tribal members on February 19 and 27, 2020. We provided all attendees of all webinars with information on the following topics regarding cormorants, their management, and the regulations process: (1) Biology and population changes; (2) background of the issues and previous management approaches; (3) current management of conflicts; (4) proposed approaches and alternatives; and (5) the planning process for the NEPA analysis. We also informed attendees that they could provide comments on the proposed actions and the scope of the NEPA review via a website (*http://www.regulations.gov,* Docket No. FWS–HQ–MB–2019–0103) or by U.S. mail or hand-delivery to Public Comments Processing, Attn: FWS–HQ–MB–2019–0103; U.S. Fish and Wildlife Service Headquarters, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

The Department of the Interior's policy is, whenever possible, to afford the public an opportunity to participate in the rulemaking process. We received more than 1,400 comments in response to the ANPR. You may review the comments received at the Federal eRulemaking Portal: *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2019–0103. We considered those comments in developing this proposed rule, and a summary of the comments will be included in the NEPA document associated with this rulemaking action. In addition, we invite interested persons to submit written comments, suggestions, or recommendations regarding this proposed regulation. Before promulgating final regulations, we will consider all comments we receive related to this rulemaking action, including those on the ANPR, the NEPA document, and this proposed rule. The comments, and any additional information we receive, may lead to final regulations that differ from those provided in this proposal.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not consider comments sent by email or fax. We will not consider hand-delivered comments that we do not receive or mailed comments that are not postmarked by the date specified in **DATES**, or written comments sent to an address other than the one listed in **ADDRESSES**.

We may post all comments in their entirety—including your personal identifying information—on *http://www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will consider, but possibly may not respond in detail to, each comment. We will summarize all comments we receive during the comment period and respond to them in the preamble of the final rule.

We seek comments or suggestions from the public, governmental agencies, Tribes, the scientific community, industry, or any other interested parties. To ensure that the rulemaking process effectively evaluates all potential issues and impacts, we are seeking comments and suggestions on the following:

(1) The balance we should seek between cormorant abundance and mitigation of conflicts with them;

(2) whether we sufficiently addressed a reasonable range of alternative management options;

(3) the level of interest and participation in use of a new special permit by States and Tribes, and the potential issues those entities would need to address if they availed themselves of such a permit;

(4) limitations as to the scope and scale (*e.g.,* geographic, seasonal) under which cormorant control activities should be conducted; and

(5) the best means to monitor cormorant take and abundance to ensure the Service and its partners meet objectives of reducing conflicts and maintaining sustainable abundances of cormorants.

In addition, we ask for information that can be used to make our assessment of economic impacts more robust. In particular we are seeking data on the number, type, and locality of establishments that will likely benefit from our proposal along with data, including costs of implementation, to help us better characterize the extent of benefits. We also ask for information and data to help us better characterize the location, types, and number of recreational fisheries that are expected to benefit from our proposal.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of

Management and Budget (OMB) will review all significant rules. In accordance with the criteria in Executive Order 12866, we do not believe this proposed action is a significant regulatory action subject to OMB review; however, OIRA has waived their review regarding their significance determination of this proposed rule.

This rule will not have an annual economic effect of $100 million or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This proposed action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Our draft economic analysis determined that this rule is expected to result in positive economic benefits to both the commercial aquaculture industry as well as the recreational sport fishing industry.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Codifying a new permit for the management of double-crested cormorants would provide an additional tool for States and Tribes to appropriately manage conflicts within their borders, while maintaining overall authority for the take of birds within the Service. Further, current regulations allow the take of cormorants only for the purposes of reducing conflicts with and damage to aquaculture, human health and safety, threatened and endangered species (as listed under the Endangered Species Act of 1973) and State-listed species of management concern, and personal property. Many of the conflicts with cormorants involve depredations of sport fish by cormorants, for which there is no relief under current Federal regulations unless warranted to reduce impacts to threatened and endangered fish species listed under the ESA. This new permit would allow the take of cormorants to reduce depredation of wild and publicly stocked fish stocked by State agencies or Tribes, thus enhancing the scope of conflict resolution to more comprehensively address areas of concern. However, the total number of cormorants from each population that could be taken annually would be determined by the Service to ensure that cormorant populations are sustainable.

The Service does not have empirical information to quantify the changes in costs as a result of this new permit, because we do not know how many States and Tribes would avail themselves of this permit and the extent to which conflicts would be addressed using it. However, we expect that the overall cost and regulatory burden to individuals, businesses, and State, Tribal, and Federal government agencies associated with this new permit would be lower than exists under current regulations. The reduction would be the result of the need for fewer individual depredation permits needed to address conflicts compared to single State or Tribal permits that could be used; hence, total costs associated with permit applications and biological assessments of those applications likely would be lower.

Executive Order 13771

We do not believe this proposed rule is an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because we believe this rule is not significant under E.O. 12866; however, OIRA has waived their review regarding their E.O. 12866 significance determination of this proposed rule.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include finfish farming and fish hatcheries (NAICS 112511) and other types of commercial aquaculture farms (NAICS Code 112519). The small business size standard defined for these businesses (as defined by the U.S. Small Business Administration) is businesses with revenues under $0.75 million.

The Service has difficulties estimating impacts to recreational fisheries because few studies have investigated direct economic impacts of cormorant management on recreational fisheries. Although a few studies have estimated impacts to local economies, loss of fishing day activities in those local areas may be offset through engaging in angling opportunities elsewhere. While it is feasible that this proposed rule could have localized effects on recreational fisheries, data does not exist to predict where those effects could occur. Further research is necessary to determine whether any impacts that may be seen at local scales can be extended to larger scales. However, the Service believes that the proposed rule will result in an overall net benefit to facilities as it will enable them to more readily and easily obtain permits to control double-crested cormorants that are negatively impacting their operations. Thus we are certifying that, if promulgated, the proposed rule would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

(a) This proposed rule would not ''significantly or uniquely'' affect small government activities, because the Federal Government would not require States to obtain this permit. A small government agency plan is not required.

(b) This proposed rule would not produce a Federal mandate on local, State, or Tribal governments or private entities. Therefore, this action is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, this proposed rule does not contain a provision for taking of private property, and would not have significant takings implications. A takings implication assessment is not required.

Federalism

This proposed rule would not interfere with the States' or Tribes' abilities to manage themselves or their funds. This rule would not have sufficient federalism effects to warrant preparation of a federalism summary impact statement under E.O. 13132.

Civil Justice Reform

In accordance with E.O. 12988, we have reviewed this proposed rule and determined that it will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule contains new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. The new reporting and/or recordkeeping requirements identified below require approval by OMB:

(1) *FWS Form 3–200–90, Permit Application—Special Double-Crested Cormorant Permit (50 CFR part 21):* This new permit would be available only to a State or Tribal wildlife management agency responsible for migratory bird management on lands under their jurisdiction. Under this permit, the Service would authorize States and Tribal wildlife agencies to conduct lethal take to reduce conflicts involving depredation at State- and Tribal-owned or operated aquaculture facilities (including hatcheries); impacts to health and human safety; impacts to threatened and endangered species (as listed under the Endangered Species Act of 1973) and listed species identified in State- or Tribal-specific legislation as threatened or endangered; damage to State- or Tribal-owned property and assets; and depredations of wild and publicly stocked fish stocked by State agencies or federally recognized Tribes.

Any State or Tribal wildlife agency wishing to obtain a permit must submit an application (FWS Form 3–200–90) to the appropriate Regional Director containing the general information and certification required by 50 CFR 13.12(a) plus the following information:

a. A brief description of your State's or Tribe's double-crested cormorant conflicts, including physical location(s);

b. A detailed statement showing that the double-crested cormorant management and take activities will address one or more of the issues specified above in paragraph (1);

c. The requested annual take of double-crested cormorants, including eggs and nests;

d. A statement indicating what information will be collected to assess whether the management and take of double-crested cormorants is alleviating the damage or other conflict;

e. A statement indicating that the State or Tribe will inform and brief all employees and subpermittees of the requirements of these regulations and permit conditions;

f. A list of all subpermittees who may conduct activities under the Special Double-Crested Cormorant Permit, including their names, addresses, and telephone numbers; and

g. The name and telephone number of the individual in your agency who will be in charge of the double-crested cormorant management activities authorized under the permit.

(2) *Designation of Subpermittees:* States and Tribes may designate subpermittees who must operate under the conditions of the permit. Subpermittees can be employees of State and Tribal wildlife agencies, USDA Wildlife Services employees, and employees of Federal and State agencies or private incorporated companies specializing in wildlife damage abatement.

(3) *FWS Form 3–202–56, Annual Report:* The State or Tribe must submit an annual report (FWS Form 3–202–56) detailing activities, including the time, numbers, and locations of birds, eggs, and nests taken and nonlethal techniques utilized, before December 31 of each year. The Service will require an annual report by the State or Tribe prior to any permit renewal.

(4) *Recordkeeping Requirements:* Any State or Tribal agency, when exercising the privileges of this permit, must keep records of all activities, including those of subpermittees, carried out under the authority of the special permit.

Title of Collection: Federal Fish and Wildlife Permit Applications and Reports—Special Double-Crested Cormorants; 50 CFR 21.

OMB Control Number: 1018–New.

Form Numbers: FWS Forms 3–200–90 and 3–202–56.

Type of Review: New.

Respondents/Affected Public: State and/or Tribal governments.

Total Estimated Number of Annual Respondents: 700.

Total Estimated Number of Annual Responses: 700.

Estimated Completion Time per Response: Varies from 45 minutes to 16 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 4,563.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Total Estimated Annual Nonhour Burden Cost: None.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Send your comments and suggestions on this information collection to OMB by the date indicated in **DATES** at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or *Info_Coll@fws.gov* (email). Please reference OMB Control Number 1018–Cormorants in the subject line of your comments.

National Environmental Policy Act

We are evaluating this proposed regulation in accordance with the criteria of the NEPA, the Department of the Interior regulations on Implementation of the NEPA (43 CFR 46.10–46.450), and the Department of the Interior Manual (516 DM 8). We will complete our analysis, in compliance with NEPA, before finalizing this regulation. When completed, you may review the NEPA document and any

comments received at the Federal eRulemaking Portal: *http://www.regulations.gov* in Docket No. FWS–HQ–MB–2019–0103.

Compliance With Endangered Species Act Requirements

Section 7 of the ESA of 1973, as amended (16 U.S.C. 1531–44), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (16 U.S.C. 1536(a)(1)). It further states that ''[e]ach Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat.'' Before the Service issues a final rule regarding the issuance of a special permit available to the States and Tribes for the take of cormorants to reduce conflicts, we will comply with provisions of the ESA as necessary to ensure that the new regulation is not likely to jeopardize the continued existence of any species designated as endangered or threatened or destroy or adversely modify its critical habitat.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' and the Department of the Interior's manual at 512 DM 2, we are considering the possible effects of this proposed rule on federally recognized Indian Tribes. The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation when appropriate and recognition of their right to self-governance and tribal sovereignty. We readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have evaluated this proposed rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that this rule may have a substantial direct effect on federally recognized Indian tribes. Accordingly, we have initiated outreach to Tribes and will initiate government-to-government consultation with federally recognized Indian tribes to ensure compliance with the Executive order.

Clarity of This Proposed Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Energy Supply, Distribution, or Use (E.O. 13211)

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is not a significant regulatory action under E.O. 13211 and would not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action. No Statement of Energy Effects is required.

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List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons described in the preamble, we propose to amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—MIGRATORY BIRD PERMITS

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

Authority: 16 U.S.C. 703–712.

■ 2. Add § 21.28 to read as follows:

§ 21.28 Special double-crested cormorant permit.

(a) *What is the special double-crested cormorant permit and what is its purpose?* The special double-crested cormorant permit is a permit issued by the Service to a State or Tribal wildlife agency authorizing management and take activities that are prohibited without authorization on lands within their jurisdiction. We will issue such a permit only when the State or Tribal wildlife agency requests it. The management and take activities conducted under the permit are intended to reduce or prevent conflicts associated with cormorants for the following concerns:

(1) Depredation of fish at State- and Tribal-owned or operated aquaculture facilities, including hatcheries;

(2) Realized and potential impacts to human health and safety (*e.g.,* collisions of airplanes with birds, fecal contamination of urban wetlands);

(3) Impacts to threatened and endangered species (as listed under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)) and listed species identified in State- or Tribal-specific legislation as threatened or endangered;

(4) Damage to State- or Tribal-owned property and assets; and

(5) Depredation of wild and publicly stocked fish stocked by State agencies or federally recognized Tribes.

(b) *Who may receive a permit?* Only State and Tribal wildlife agencies are eligible to receive a permit to undertake management and take activities. Additionally, only employees or subpermittees of a permitted State or Tribal wildlife agency may undertake activities for double-crested cormorants in accordance with the conditions specified in the permit, conditions specified in 50 CFR part 13, and conditions specified in paragraph (d) of this section.

(c) *How does a State or Tribe apply for a permit?* Any State or Tribal wildlife agency wishing to obtain a permit must submit an application (FWS Form 3–200–90) to the appropriate Regional Director (see § 13.11(b) of this subchapter) containing the general information and certification required by § 13.12(a) of this subchapter plus the following information:

(1) A brief description of your State's or Tribe's double-crested cormorant conflicts, including physical location(s);

(2) A detailed statement showing that the double-crested cormorant management and take activities will address one or more of the issues specified in paragraph (a) of this section;

(3) The requested annual take of double-crested cormorants, including eggs and nests;

(4) A statement indicating what information is available and will be collected to assess whether the management and take of double-crested cormorants is alleviating the damage or other conflict;

(5) A statement indicating that the State or Tribe will inform and brief all employees and subpermittees of the requirements of these regulations and permit conditions;

(6) A list of all subpermittees who may conduct activities under the Special Double-Crested Cormorant Permit, including their names, addresses, and telephone numbers; and

(7) The name and telephone number of the individual in your agency who will be in charge of the double-crested cormorant management activities authorized under the permit.

(d) *What are the conditions of the permit?* The special double-crested cormorant permits are subject to the general conditions in 50 CFR part 13, the conditions elsewhere in this section, and, unless otherwise specifically authorized on the permit, the conditions outlined below:

(1) *What are the limitations on management and take activities?* (i) Take of double-crested cormorants as a management tool under this section may not exceed the number authorized by the permit. States and Tribes must use nonlethal methods, and determine that those methods are ineffective, before lethally taking double-crested cormorants.

(ii) A permit under this section does not authorize the take of any other migratory bird, including other species of cormorants; the take of bald or golden eagles; or the take of any species listed under the Endangered Species Act as threatened or endangered. If these impacts to other migratory bird species or to threatened and endangered species are likely to occur, the permittee must obtain permits specifically authorizing those activities (*i.e.,* additional migratory bird, Eagle Act and/or threatened and endangered species permits).

(iii) Methods of take for double-crested cormorants are at the State's or Tribe's discretion. Methods include, but are not limited to, firearms, traps, egg and nest manipulation, and other damage control techniques consistent with accepted wildlife damage-management programs. Only 100 percent corn oil, a substance exempted from regulation by the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act, may be used to oil eggs.

(iv) Take using firearms must use nontoxic shot or nontoxic bullets (§ 20.21 of this subchapter). However, this prohibition would not apply if an air rifle or an air pistol is used.

(v) Individuals conducting lethal take activities may not use decoys, calls, or other devices or bait to lure birds within gun range.

(2) *When may a State or Tribe conduct management and control activities?* States and Tribes and their employees and subpermittees may conduct management activities, including lethal take, at any time of year.

(3) *How must States and Tribes dispose of or utilize cormorants taken under this permit?* States and Tribes and their employees and subpermittees may possess, transport, and otherwise dispose of double-crested cormorants taken under the regulations in this section. States and Tribes must utilize such birds by donation to public museums or public institutions for scientific or educational purposes, or by burying or incinerating them. States, Tribes, their employees, and subpermittees may not sell, offer for sale, barter, or ship for the purpose of sale or barter any double-crested cormorants taken under this section or their parts or eggs.

(4) *How does the permit relate to existing State and Tribal law and Federal land?* No person conducting management and take activities under the regulations in this section should construe the permit to authorize the killing of double-crested cormorants contrary to any State or Tribal law or regulations or on any Federal land without specific written authorization by the responsible management agency. No person may exercise the privileges granted under this section unless that person possesses any permits required for such activities by any State, Tribal, or Federal land manager.

(5) *How will the Service ensure that persons conducting control activities have the authority to do so?* Any State or Tribal employee or subpermittee authorized to carry out management and take activities must have a copy of the permit and designation in their possession when carrying out any activities. The State or Tribe must also

require the property owner or occupant on whose premises the State or Tribe is conducting activities to allow, at all reasonable times, including during actual operations, free and unrestricted access to any Service special agent or refuge officer, State or Tribal wildlife or deputy wildlife agent, warden, protector, or other wildlife law enforcement officer (wildlife officer) on the premises where they are, or were, conducting activities. Furthermore, any State or Tribal employee or subpermittee conducting such activities must promptly furnish information concerning such activities to any such wildlife officer.

(6) *What are the reporting requirements of the permit?* Any State or Tribal employee or subpermittee exercising the privileges granted by the regulations in this section must keep records of all activities carried out under the authority of this permit, including the number of double-crested cormorants killed and their disposition. Any other species of bird taken incidentally to double-crested cormorant management activities under this permit, along with the numbers of birds taken of those species, also must be reported. The State or Tribe must submit an annual report (FWS Form 3–202–56) detailing activities, including the time, numbers, and locations of birds, eggs, and nests taken and nonlethal techniques utilized, before December 31 of each year. The State or Tribe should submit the annual report to the appropriate Migratory Bird Permit Office in the Region in which the permittee is located (see § 2.2 of this subchapter).

(7) *What are the limitations of this permit?* The following limitations apply:

(i) Nothing in this section applies to any Federal land within a State's or Tribe's boundaries without written permission of the Federal agency with jurisdiction.

(ii) We will issue permits only to State and Tribal wildlife agencies in the conterminous (*i.e.,* contiguous 48) United States.

(iii) States and Tribes may designate subpermittees who must operate under the conditions of the permit. Subpermittees can be employees of State and Tribal wildlife agencies, U.S. Department of Agriculture's Wildlife Services employees, and employees of Federal and State agencies or private incorporated companies specializing in wildlife damage abatement.

(iv) A special double-crested cormorant permit issued or renewed under the regulations in this section expires on the date designated on the face of the permit unless it is amended or revoked, or at such time we determine that conflicts with cormorants within the bounds of the specific population of double-crested cormorants have been reduced to the point where lethal take is no longer necessary. In all cases, the term of the permit may not exceed 5 years from the date of issuance or renewal.

(v) We reserve the right to suspend or revoke any permit, as specified in §§ 13.27 and 13.28 of this subchapter.

(e) *What are the OMB information collection requirements of the permit program?* OMB has approved the information collection requirements of the permit and assigned OMB Control Number 1018–####. Federal agencies 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. Direct comments regarding the burden estimate or any other aspect of the information collection to the Service's Information Collection Clearance Officer at the address provided at 50 CFR 2.1(b).

George Wallace,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2020–11988 Filed 6–4–20; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 85, No. 109
Friday, June 5, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–SC–20–0048]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for an extension of and revision to the currently approved information collection for the Child Nutrition Labeling Program.

DATES: Comments on this notice must be received by August 4, 2020.

ADDRESSES: Interested persons are invited to submit written comments at *http://www.regulations.gov* or to the Contract Services Branch, Specialty Crops Inspection Division, USDA Specialty Crops Program, STOP 0247, 1400 Independence Avenue SW, Washington, DC 20250–0247. Comments should reference the dates and page number of this issue of the **Federal Register**, and will be made available for public inspection at *http://www.regulations.gov* and in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia Tung-Tayman, Contract Services Branch, Specialty Crops Inspection Division, telephone (202) 720–0367 and FAX (202) 720–3704.

SUPPLEMENTARY INFORMATION:

Title: Child Nutrition Labeling Program.

OMB Number: 0581–0261.

Expiration Date of Approval: 3 years from approval.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Child Nutrition (CN) Labeling Program is a voluntary technical assistance service that helps schools and institutions participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Child and Adult Care Food Program (CACFP), and Summer Food Service Program (SFSP) determine a product's contribution toward the food-based meal pattern requirements. (See Appendix C to 7 CFR parts 210, 220, 225, and 226 for more information on these programs.) A CN label on a product assures schools and other Child Nutrition Program operators that the product contributes to the meal pattern requirements as printed on the label. There is no Federal requirement for commercial products to have a CN label statement in order to be included in meals served by schools and institutions. The label review program transferred from the Food and Nutrition Service to AMS in 2010.

To participate in the CN Labeling Program, a manufacturer submits a label application to AMS for evaluation. AMS reviews the product formulation to determine the contribution a serving of the product makes towards the food-based meal pattern requirements. The application form submitted to AMS is the same form that a manufacturer submits to the USDA's Food Safety and Inspection Service (FSIS) Labeling and Program Delivery Division for review of meat and poultry labels. Participation in the CN Labeling Program is voluntary; manufacturers who wish to place a CN label on their products must comply with CN Labeling Program requirements.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Manufacturers who produce food for the school foodservice.

Estimated Number of Respondents: 262.

Estimated Total Annual Responses: 1,048.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 262 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the information collection burden on those who respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

All comments on this notice will be summarized and included in the request for OMB approval, and become a matter of public record.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–12190 Filed 6–4–20; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 2, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 6, 2020 will be considered. Written comments and recommendations for the proposed information collection should be

submitted within 30 days of the publication of this notice on the following website *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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Power of Attorney.

OMB Control Number: 0560–0190.

Summary of Collection: Individuals or authorized representatives of entities wanting to appoint another to act as their attorney-in-fact in connection with certain Farm Service Agency (FSA), Commodity Credit Corporation (CCC), and Risk Management Agency (RMA) programs, Federal Crop Insurance Corporation (FCIC), Natural Resources Conservation Service (NRCS) and related actions must complete a Power of Attorney form and Extension Sheet to accommodate additional signatures (FSA–211/211A). The FSA–211/211A serves as evidence that the grantor has appointed another to act on their behalf for certain FSA, CCC, FCIC, RMA, and NRCS programs and related actions giving the appointee legal authority to enter into binding agreements on the grantor's behalf.

Need and Use of the Information: FSA will collect information to verify an individual's authority to sign and act for another in the event of errors or fraud that requires legal remedies. The information collected on the FSA–211/211A is limited to the grantor's name, signature, and identification number, the grantee's name, address, and the applicable FSA, CCC, FCIC, NRCS, and RMA programs or transactions.

Description of Respondents: Individuals or households.

Number of Respondents: 12,000.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 6,224.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–12212 Filed 6–4–20; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 1, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 6, 2020 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: In-Home Food Safety Behaviors and Consumer Education: Annual Observational Study.

OMB Control Number: 0583–0169.

Summary of Collection: The U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary of Agriculture (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act the Poultry Products Inspection Act (21 U.S.C. 453, *et seq.,* 601 *et. seq.*) FSIS protects the public by verifying that meat, poultry, and processed egg products are wholesome; not adulterated; and properly marked, labeled, and packaged. USDA FSIS' Office of Public Affairs and Consumer Education (OPACE) ensures that all segments of the farm-to-table chain receive valuable food safety information. The consumer education programs developed by OPACE's Food Safety Education Staff inform the public on how to safely handle, prepare, and store meat, poultry, and egg products to minimize incidence or foodborne illness. To inform the development of food safety communication products and to evaluate public health education and communication activities, FSIS is requesting approval to renew the information collection to conduct observational studies using an experimental design.

Need and Use of the Information: The observational studies will help FSIS assess adherence to the four recommended food safety behaviors of clean, separate, cook, and chill; determine whether food safety messaging focused on those behaviors affects consumer food safety handing behaviors; and determine whether consumers introduce cross-contamination during food preparation. The results of this research will be used to enhance messaging and accompanying materials to improve food safety behaviors of consumers.

Description of Respondents: Individuals or households.

Number of Respondents: 1,600.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,036.

Food Safety and Inspection Service

Title: State Meat and Poultry Inspection Programs.

OMB Control Number: 0583–0170.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U. S.C. 601 *et. seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, not adulterated, and properly labeled and packaged.

Need and Use of the Information: FSIS collects information from federally-assisted State Meat and Poultry Inspection programs to ensure that their programs operate in a manner that is at least equal to FSIS's Federal inspection program in the protection of

public interest; comply with requirements of Federal Civil Rights laws and regulations; meet necessary laboratory quality assurance standards and testing frequencies; and have the capability to perform microbiology and food chemistry methods that are ''at least equal to'' methods performed in FSIS laboratories.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 27.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 6,887.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–12111 Filed 6–4–20; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0062]

Decision To Authorize the Importation of Fresh Carrots From the Republic of Korea Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation of fresh carrots from the Republic of Korea into the United States. Based on the findings of a pest risk analysis, which we made available to the public to review and comment through a previous notice, we have concluded that the application of one or more phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh carrots from the Republic of Korea into the United States.

DATES: The articles covered by this notification may be authorized for importation after June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Kreger, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2356; *carol.m.kreger@usda.gov.*

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 and spreading within the United States.

Section 319.56–4 of the regulations contains a notice-based process based on established performance standards for authorizing the importation of fruits and vegetables. The performance standards, known as designated phytosanitary measures, are listed in paragraph (b) of that section. Under the process, APHIS proposes to authorize the importation of a fruit or vegetable into the United States if, based on the findings of a pest risk analysis, we determine that the measures can mitigate the plant pest risk associated with the importation of that fruit or vegetable. APHIS then publishes a notice in the **Federal Register** announcing the availability of the pest risk analysis that evaluates the risks associated with the importation of that fruit or vegetable.

In accordance with that process, we published a notice [1] in the **Federal Register** on November 12, 2019 (84 FR 61005–61006, Docket No. APHIS–2019–0062), in which we announced the availability, for review and comment, of a pest risk assessment (PRA). The assessment evaluated the risks associated with the importation into the United States of fresh carrots from the Republic of Korea. With the PRA was a risk management document (RMD), prepared to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk.

We solicited comments on the PRA and RMD for 60 days, ending on January 13, 2020. We received one comment by that date. It was from a private citizen.

The commenter opposed the importation of carrots from the Republic of Korea into the United States out of concern for pest risks that were currently unknown to APHIS and out of concern that imports be tested at ports of entry under importation oversight. Below, we respond to these comments by addressing their two topics, pest risks and import control measures.

Comments on the Pest Risk Assessment

APHIS received a request from the national plant protection organization (NPPO) of the Republic of Korea to allow the importation of fresh carrots into the United States. As part of our evaluation of the Republic of Korea's request, we prepared the PRA to identify pests of quarantine significance that could follow the pathway of importation of fresh carrots into the United States from the Republic of Korea.

The commenter expressed concern that unknown pests could be introduced into the United States as the result of importation of carrots from the Republic of Korea.

We understand this concern, yet APHIS finds no basis for changing our proposed action in response. As documentation associated with the public notice for comment shows, APHIS thoroughly and sufficiently assessed all possible risks from this importation and proposed conditions adequate to mitigate the possible risks. Our methodology for the PRA included careful examination of the scientific literature, port-of-entry pest interception data, and information the Government of the Republic of Korea furnished for our assessment. From these sources, we compiled a list of all plant pests with actionable regulatory status for the United States that are present in the Republic of Korea (on any host) and associated with the underground portion of carrots (anywhere in the world). We have confidence in the thorough nature of the pest list.

Moreover, the PRA identified only two quarantine pests with actionable regulatory status for the United States that could have a reasonable likelihood of being associated with the commodity following harvesting from the field and prior to any post-harvest processing, and thus potentially able to follow the pathway. These two pests are: *Helicobasidium mompa* and *Sclerotinia nivalis,* both phytopathogenic fungi. Based on the PRA, we prepared the RMD to identify phytosanitary measures that could be applied to the fresh carrots to mitigate the pest risk so that the pests would not be introduced into the United States.

Finally, we note that all shipments of carrots from the Republic of Korea will be subject to inspection for quarantine pests at the U.S. ports of entry. These inspections are for any pests of quarantine significance, not just those identified in the PRA. Additionally, APHIS monitors foreign countries for new introduction of quarantined pests.

The commenter also expressed concerns that there be proper oversight of imported products and testing to preclude both introduction of pests at importation and resulting spread of pests to plants in the United States.

We understand the commenter's concerns. However, we do not consider

[1] To view the notice, PRA, RMD, economic effects assessment, and the comment that we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2019-0062.*

testing at ports of entry to be warranted and consider the mitigations in the RMD to be sufficient for the reasons set forth in the RMD.

We have concluded that fresh carrots can be safely imported from the Republic of Korea into the United States using one or more of the five designated phytosanitary measures listed in § 319.56–4(b). The NPPO of the Republic of Korea must enter into an operational work plan with APHIS that spells out the daily procedures the NPPO will take to implement the measures identified in the RMD.

Therefore, in accordance with § 319.56–4(c)(3)(iii), we are announcing our decision to authorize the importation of carrots from the Republic of Korea to the United States subject to the following phytosanitary measures summarized below:

- Carrots must be commercially produced and may be imported in commercial consignments only.
- Carrots must be grown in places of production registered and packed in packinghouses registered by the NPPO of the Republic of Korea as part of an export program to the United States.
- The NPPO of the Republic of Korea must review and maintain all forms and documents related to export program activities in registered places of production and packinghouses for at least 1 year and make them available to APHIS upon request.
- If the NPPO of the Republic of Korea finds that a place of production or packinghouse is not complying with the requirements of the systems approach, no carrot from the place of production or packinghouse will be eligible for export to the United States until APHIS and the NPPO of the Republic of Korea conduct an investigation and appropriate remedial actions have been implemented.
- Carrots must originate from a place of production that was inspected for signs of fungi of quarantine concern prior to harvest and found free of disease symptoms or must be treated with a broad-spectrum fungicide during the growing season, inspected prior to harvest, and found free of fungi of quarantine concern.
- Carrot taproots must be washed and disinfected, and free of soil and green tops.
- A biometric sample of carrot taproots (jointly agreed upon by APHIS and the NPPO) must be inspected in the Republic of Korea by the NPPO of the Republic of Korea following any post-harvest processing. The biometric sample must be visually inspected for the quarantine pests *Helicobasidium mompa* and *Sclerotinia nivalis.* If any quarantine fungi are found, the entire lot of carrots is prohibited from import into the United States. APHIS may prohibit the importation into the United States of carrots from the places of production for the season.
- Each consignment of carrots must be accompanied by a phytosanitary certificate issued by the NPPO of the Republic of Korea with an additional declaration (AD) stating that the consignment was produced and prepared for export in accordance with the operational workplan and inspected and found free of pests of quarantine concern.
- Carrots are subject to inspection at the port of entry into the United States.
- Carrots presented for inspection at the port of entry to the United States must be identified to specify the place of production in which the carrots were produced, and the packinghouse(s), in which the carrots were processed and packed. This identification must be maintained until the carrots are released from the port of first arrival into the United States.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *https://epermits.aphis.usda.gov/manual*). In addition to these specific measures, fresh carrots from the Republic of Korea will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the reporting and recordkeeping requirements included in this notice are covered under the Office of Management and Budget control number 0579–0049.202F; The estimated annual burden on respondents is 362 hours, which will be added to 0579–0049 in the next quarterly update.

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.

Congressional Review Act

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

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 1st day of June 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–12202 Filed 6–4–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Supplemental Nutrition Assistance Program (SNAP) Forms: Applications, Periodic Reporting, and Notices

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection. This collection is a revision of the currently approved collection for the applications, periodic reporting, and notices burden calculations for the Supplemental Nutrition Assistance Program (SNAP).

DATES: Written comments must be received on or before August 4, 2020.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comment.

- *Preferred Method:* Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.
- *Mail:* Send comments to Certification Policy Branch, Program Development Division, FNS, 1320 Braddock Place, Alexandria, VA 22314.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to the Certification Policy Branch, Program Development Division, FNS, 1320 Braddock Place, Alexandria, VA 22314 or via email to *SNAPCPBRules@usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Supplemental Nutrition Assistance Program Forms: Applications, Periodic Reporting, and Notices.

Form Number: None.

OMB Number: 0584–0064.

Expiration Date: July 31, 2020.

Type of Request: Revision of a currently approved collection.

Abstract: The information collection addresses the burden estimates associated with applications, which are designed at the State level; periodic reporting; and notices sent to SNAP participants or applicants (Individuals/Households). Following Federal requirements, State agencies are responsible for determining the eligibility of SNAP applicant individuals or the entire household, and issuing benefits to those households entitled to benefits under the Food and Nutrition Act of 2008 (the Act), as amended. State agencies obtain demographics such as: Names, social security numbers, and date of births of all household members; addresses; and individual or household income information from households through the initial application and recertification processes as well as through various reports to determine program eligibility and benefit levels. SNAP notices sent to individual or household addresses are the primary method State agencies communicate with SNAP applicants and current participants. This information must be collected from households to ensure that they are eligible for the program and that they receive the correct amount of SNAP benefits. The Federal procedures for implementing the application and certification procedures in the Act are in Parts 271, 272, and 273 of the Title 7 of the Code of Federal Regulations (CFR). Part 271 contains general information and definitions, Part 272 contains requirements for participating State agencies, and Part 273 contains procedures for the certification of eligible households.

In the process of renewing this information collection with changes, FNS modified the burden of some of its reporting and recordkeeping requirements to reflect current SNAP caseload levels and to better account for the complexity of certain activities applicable to State agencies, Local agencies, and Individuals/Households. In addition, FNS included burden for a set of existing requirements applicable to State agencies and Individuals/Households that were not delineated in previous burden tables. The burden for this set of requirements, listed below, was combined with the burden of the requirements in the current approval and thus, represent an increase in total annual responses and total annual burden hours for 53 State agencies, 2,724 Local agencies and 19,699,000 Individuals/Households.

1. Failure to Report Shelter Costs Change Due to Move Notice (7 CFR 273.14(b)): Under this requirement, 53 State agencies will each send, on average, 9,678.98 notifications to households who have changed their address and have not provided updated information about their shelter costs that their allotment will be recalculated without any new deductions. Thus, the information collection activities associated with this requirement result in 512,986 responses for State agencies. FNS estimates that it takes States approximately 2 minutes (0.0334 hours) per response, resulting in 17,133.73 burden hours. This adjustment to the burden reflects an increase of 512,986 total annual responses and 17,133.73 total annual burden hours for States agencies. FNS also estimates that 512,986 households will each read one notification. Thus, the information collection activities associated with this requirement result in 512,986 responses for households. FNS estimates that it takes households approximately 1 minute (0.0167 hours) per response, resulting in 8,566.87 burden hours. This adjustment to the burden reflects an increase of 512,986 total annual responses and 8,566.87 total annual burden hours for households.

2. Report of ABAWDs Change in Work Hours below 20 Hours per Week (7 CFR 273.24(b)(7)): Under this requirement, 53 State agencies will each review, on average, 14,049.81 reports from SNAP participating households when any eligible member has had a reduction in work hours below an average of 20 hours per week, averaged monthly. Thus, the information collection activities associated with this requirement result in 744,640 responses for State agencies. FNS estimates that it takes States approximately 11 minutes (0.1837 hours) per response, resulting in 136,790.37 burden hours. This adjustment to the burden reflects an increase of 744,640 total annual responses and 136,790.37 total annual burden hours for States agencies. FNS also estimates that 744,640 households will each submit one report. Thus, the information collection activities associated with this requirement result in 744,640 responses for households. FNS estimates that it takes households approximately 10 minutes (0.167 hours) per response, resulting in 124,354.88 burden hours. This adjustment to the burden reflects an increase of 744,640 total annual responses and 124,354.88 total annual burden hours for households.

3. Notice of Option to Disqualify Custodial Parent for Failure to Cooperate (7 CFR 273.11(o)(2)): Under this requirement, 53 State agencies will each send, on average, 6,173.40 notifications to inform custodial parents of a right to good cause for non-cooperation prior to a State agency requiring cooperation from a parent. Thus, the information collection activities associated with this requirement result in 327,190 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours) per response, resulting in 16,392.22 burden hours. This adjustment to the burden reflects an increase of 327,190 total annual responses and 16,392.22 total annual burden hours for States agencies. FNS also estimates that 327,190 custodial parents (individual or household) will each read one notification. Thus, the information collection activities associated with this requirement result in 327,190 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0835 hours) per response, resulting in 27,320.37 burden hours. This adjustment to the burden reflects an increase of 327,190 total annual responses and 27,320.37 total annual burden hours for households.

4. Notice of Match Results (7 CFR 273.12(c)(3)(iii)): Under this requirement, 53 State agencies will each distribute, on average, 9,044.23 notices of match results to households for which the State agency receives match information related to a Prison Verification System notification or a deceased individual. Thus, the information collection activities associated with this requirement result in 479,344 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours)

per response, resulting in 24,015.13 burden hours. This adjustment to the burden reflects an increase of 479,344 total annual responses and 24,015.13 total annual burden hours for States agencies. FNS also estimates that 383,475 households will each read one notification. Thus, the information collection activities associated with this requirement result in 383,475 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0835 hours) per response, resulting in 32,020.16 burden hours. This adjustment to the burden reflects an increase of 383,475 total annual responses and 32,020.16 total annual burden hours for households.

5. Notice of Subject to Work Requirements (7 CFR 273.7(c)(1)): Under this requirement, 53 State agencies will each provide, on average, 98,566.04 written statements to eligible household members under the work provision requirements of 7 CFR 273.7 explaining work requirements, the rights and responsibilities of eligible members, and the consequences for failing to comply. Thus, the information collection activities associated with this requirement result in 5,224,000 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours) per response, resulting in 261,722.40 burden hours. This adjustment to the burden reflects an increase of 5,224,000 total annual responses and 261,722.40 total annual burden hours for States agencies. FNS also estimates that 4,179,200 household members will each read one written statement. Thus, the information collection activities associated with this requirement result in 4,179,200 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0835 hours) per response, resulting in 348,963.20 burden hours. This adjustment to the burden reflects an increase of 4,179,200 total annual responses and 348,963.20 total annual burden hours for households.

6. Referral to Employment & Training and Notice of Requirements (7 CFR 273.7(c)(2)): Under this requirement, State agencies must screen each work registrant to determine whether it is appropriate to refer the individual to an E&T program. Fifty-three (53) State agencies will each issue, on average, 2,424.43 notices to participants of the requirements of the E&T program component, what will constitute non-compliance, and the sanctions for non-compliance. Thus, the information collection activities associated with this requirement result in 128,495 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours) per response, resulting in 6,437.60 burden hours. This adjustment to the burden reflects an increase of 128,495 total annual responses and 6,437.60 total annual burden hours for States agencies. FNS also estimates that 102,796 households will each read one notice. Thus, the information collection activities associated with this requirement result in 102,796 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0835 hours) per response, resulting in 8,583.47 burden hours. This adjustment to the burden reflects an increase of 102,796 total annual responses and 8,583.47 total annual burden hours for households.

7. Notice of Required Verification (7 CFR 273.2(c)(5)): Under this requirement, 53 State agencies will each provide, on average, 617,338.72 notices to households with all verification requirements the household must meet at the time of application for certification and recertification. Thus, the information collection activities associated with this requirement result in 32,718,952 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours) per response, resulting in 1,639,219.50 burden hours. This adjustment to the burden reflects an increase of 32,718,952 total annual responses and 1,639,219.50 total annual burden hours for States agencies. FNS also estimates that 26,175,162 households will each read one notice. Thus, the information collection activities associated with this requirement result in 26,175,162 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0835 hours) per response, resulting in 2,185,626.03 burden hours. This adjustment to the burden reflects an increase of 26,175,162 total annual responses and 2,185,626.03 total annual burden hours for households.

8. Fleeing Felon and Probation or Parole Violators Determination (7 CFR 273.11(n)(3)–(4)): Under this requirement, 53 State agencies will each send, on average, 12,346.77 requests for information to a law enforcement agency about the conditions of a felony warrant or a probation or parole violation for a SNAP participant, and verify if a law enforcement agency has taken any action following the initial request for information. Thus, the information collection activities associated with this requirement result in 654,379 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours) per response, resulting in 32,784.39 burden hours. This adjustment to the burden reflects an increase of 654,379 total annual responses and 32,784.39 total annual burden hours for States agencies. FNS also estimates that 654,379 households will each read one notice. Thus, the information collection activities associated with this requirement result in 654,379 responses for households. FNS estimates that it takes households approximately 3 minutes (0.0501 hours) per response, resulting in 32,784.39 burden hours. This adjustment to the burden reflects an increase of 654,379 total annual responses and 32,784.39 total annual burden hours for households.

9. Mass Change in Federal Benefits (7 CFR 273.12(e)(3)): Under this requirement, 53 State agencies will each establish procedures for making mass changes to reflect cost of living adjustments in benefits and any other mass changes under Retirement, Survivors, and Disability Insurance (RSDI) and Supplemental Security Income (SSI) once annually. Thus, the information collection activities associated with this requirement result in 53 responses for State agencies. FNS estimates that it takes States 10 hours per response, resulting in 530.00 burden hours. This adjustment to the burden reflects an increase of 53 total annual responses and 530.00 total annual burden hours for States agencies. There are no burden activities required for households.

10. Change Report Form (7 CFR 273.12(b)(4)): Under this requirement, 53 State agencies will each provide, on average, 794,055.70 change report forms to households upon initial application, recertification, and when any household submits a change report. Thus, the information collection activities associated with this requirement result in 42,084,952 responses for State agencies. FNS estimates that it takes States approximately 1 minute (0.0167 hours) per response, resulting in 702,818.70 burden hours. This adjustment to the burden reflects an increase of 42,084,952 total annual responses and 702,818.70 total annual burden hours for States agencies. FNS also estimates that 42,084,952 households will each complete one change report form. Thus, the information collection activities associated with this requirement result in 42,084,952 responses for households. FNS estimates that it takes households approximately 1 minute (0.0167 hours) per response, resulting in 702,818.70 burden hours. This adjustment to the burden reflects an increase of 42,084,952 total annual responses and

702,818.70 total annual burden hours for households.

11. Notice of Eligibility, Denial, or Pending Status (7 CFR 273.10(g)(1)(i) & (ii) & (iii)): For State agencies, the burden associated with this requirement is included in the burden table of the currently approved collection. However, for households, this requirement is not included as a separate entry in the burden table.

Under this requirement 53 State agencies will each send, on average, 687,625.36 notices to households to advise them of the disposition of their application for initial certification or recertification. Thus, the information collection activities associated with this requirement result in 36,444,144 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours) per response, resulting in 1,825,851.61 burden hours. The currently approved number of responses and burden hours for this requirement are 37,749,439.21 and 1,260,831.27, respectively. This adjustment to the burden reflects a decrease of 1,305,295.21 total annual responses and an increase of 565,020.34 total annual burden hours for States agencies. FNS also estimates that 29,155,315 households will each read one notice. Thus, the information collection activities associated with this requirement result in 29,155,315 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0835 hours) per response, resulting in 2,434,468.80 burden hours. This adjustment to the burden reflects an increase of 29,155,315 total annual responses and 2,434,468.80 total annual burden hours for households.

12. Notice of Missing or Incomplete Report (7 CFR 273.12(a)(4)(iii) & 273.12(a)(5)(iii)(D)): For State agencies, the burden associated with this requirement is included in the burden table of the currently approved collection. However, for households, this requirement is not included as a separate entry in the burden table.

Under this requirement, 53 State agencies will each send, on average, 1,009.17 notices to ongoing households to advise them when they have failed to submit the required monthly, quarterly or semiannual report altogether or, if the household submitted the report, that some of the information required to be included in such reports was not provided. Thus, the information collection activities associated with this requirement result in 53,486 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours) per response, resulting in 2,679.65 burden hours. The currently approved number of responses and burden hours for this requirement are 60,942.05 and 2,035.46, respectively. This adjustment to the burden reflects a decrease of 7,456.05 total annual responses and an increase of 644.18 total annual burden hours for States agencies. FNS also estimates that 42,789 households will each read one notice. Thus, the information collection activities associated with this requirement result in 42,789 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0835 hours) per response, resulting in 3,572.88 burden hours. This adjustment to the burden reflects an increase of 42,789 total annual responses and 3,572.88 total annual burden hours for households.

13. Notice of Expiration (7 CFR 273.14(b)(1)): For State agencies, the burden associated with this requirement is included in the burden table of the currently approved collection. However, for households, this requirement is not included as a separate entry in the burden table.

Under this requirement, 53 State agencies will each send, on average, 365,751.11 notices to currently participating households at least 30 days prior to the expiration of their current certification period. Thus, the information collection activities associated with this requirement result in 19,384,809 responses for State agencies. FNS estimates that it takes States approximately 3 minutes (0.0501 hours) per response, resulting in 971,178.93 burden hours. The currently approved number of responses and burden hours for this requirement are 22,087,011.18 and 737,706.17, respectively. This adjustment to the burden reflects a decrease of 2,702,202.18 total annual responses and an increase of 233,472.76 total annual burden hours for States agencies. FNS also estimates that 15,507,847 households will each read one notice. Thus, the information collection activities associated with this requirement result in 15,507,847 responses for households. FNS estimates that it takes households approximately 5 minutes (0.0835 hours) per response, resulting in 1,294,905.22 burden hours. This adjustment to the burden reflects an increase of 15,507,847 total annual responses and 1,294,905.22 total annual burden hours for households.

FNS made the above adjustments to more accurately reflect the burden associated with the information collection requirements at 7 CFR parts 271, 272, and 273.

Considering all burden adjustments made as part of this renewal (*e.g.,* modification of hourly burden estimates, inclusion of burden for existing requirements not delineated in previous burden tables), FNS is requesting an overall burden of 937,793,284.93, rounded to 937,793,285, total annual responses and 112,543,753.58, rounded to 112,543,754, total annual burden hours. These burden estimates include 772,614,488.93 total annual responses and 108,220,423.43 total annual burden hours for reporting by State agencies and Individuals/Households. The estimates also include 165,178,796.00 total annual responses and 4,323,340.14 total annual burden hours for recordkeeping by Local agencies. A breakdown of the burden estimates per type of affected public is provided below.

Reporting Burden for State Agencies

Estimated Total Number of Respondents: 53.

Estimated Frequency of Responses per Respondents: 7,389,511.23.

Estimated Total Annual Responses: 391,644,095.

Estimated Time per Response: 0.1202.

Estimated Total Annual Reporting Burden: 47,062,598.20.

Reporting Burden for Individuals/ Households

Estimated Total Number of Respondents: 19,699,000.

Estimated Frequency of Responses per Respondents: 19.34.

Estimated Total Annual Responses: 380,970,394.

Estimated Time per Response: 0.1605.

Estimated Total Annual Reporting Burden: 61,157,815.23.

Recordkeeping Burden for Local Agencies

Estimated Total Number of Recordkeepers: 2,724.

Estimated Frequency of Responses per Recordkeeper: 60,638.32.

Estimated Total Annual Responses: 165,178,796.00.

Estimated Time per Record: 0.0262.

Estimated Total Annual Recordkeeping Burden: 4,323,340.14.

Overall Grand Total Reporting and Recordkeeping Burden for All Affected Public

Estimated Overall Total Number of Respondents: 19,701,777.

Estimated Overall Frequency of Responses per Respondents: 47.60.

Estimated Overall Total Annual Responses: 937,793,284.93.

Estimated Overall Time per Response: 0.12.

Estimated Overall Grand Total Annual Reporting and Recordkeeping Burden: 112,543,753.58.

The currently approved burden for this information collection is 643,938,886 total annual responses and 77,690,005 total annual burden hours. Thus, when compared to the burden in the currently approved information collection, the adjustments in this renewal represent an increase of 293,854,398.93, rounded to 293,854,399, total annual responses and 34,853,748.58, rounded to 34,853,749, total annual burden hours. All burden changes associated with the renewal of this information collection are due to adjustments.

FNS is currently in the process of conducting less than ten consultations with State agencies and FNS staff regarding the accuracy of the burden estimates in this information collection, including the validity of the methodology and assumptions that were used to estimate the burden. The inputs from those consultations will be considered, along with the public comments received in response to this notice, as FNS finalizes the burden estimate to be included in the request for OMB for approval.

FNS SNAP Forms ICR Total Burden Estimate

[OMB Control No. 0584–0064]

Affected public	Estimated number of respondent	Estimated number of responses annually per respondent	Estimated total annual responses	Estimated average number of hours per response	Estimated total hours
Reporting Burden:					
State Agencies	53	7,389,511.23	391,644,095.00	0.1202	47,062,598.20
Local Agencies	0	0	0	0	0
Individuals/Households	19,699,000	19.34	380,970,393.93	0.1605	61,157,815.23
Total Estimated Reporting Burden	*19,699,053*	*39.22*	*772,614,488.93*	*0.1400*	*108,220,413.43*
Recordkeeping Burden:					
State Agencies	0	0	0	0	0
Local Agencies	2,724	60,638.32	165,178,796.00	0.0262	4,323,340.14
Individuals/Households	0	0	0	0	0
Total Estimated Recordkeeping Burden	*2,724*	*60,638.32*	*165,178,796.00*	*0.0262*	*4,323,340.14*
Total of Reporting and Recordkeeping for #0584–0064	19,701,777	47.60	937,793,284.93	0.1200	112,543,753.58

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–12237 Filed 6–4–20; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Minnesota 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 and the Federal Advisory Committee Act that the Minnesota Advisory Committee (Committee) will hold a meeting via teleconference on Friday, June 5, 2020 at 12:00 p.m. Central Time, the purpose of the meeting is to review and approve the Committee's statement on the Civil Rights Implications in the recent unrest in Minnesota.

DATES: The meeting will be held on Friday, June 5, 2020 at 12:00 p.m. Central Time.

Public Call Information: Dial: 800–367–2403, Conference ID: 6816733.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Official, at *dbarreras@usccr.gov* or 202–499–4066.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the call-in information listed above. 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 to the Committee 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 and conference ID number.

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 emailed to Carolyn Allen at *callen@usccr.gov.in* the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Program Unit at 202–499–4066.

Records generated from this meeting may be inspected and reproduced at the Chicago 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, Minnesota Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Chicago Office at the above email or phone number.

Agenda

I. Welcome and Roll Call

II. Discussion of recent unrest in Minnesota
III. Public Comment
IV. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the immediacy of the subject matter.

Dated: June 1, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–12150 Filed 6–4–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Oregon 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 Oregon Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Pacific Time) Thursday, June 25, 2020. The purpose of this meeting is for the committee to vote on their project proposal and begin brainstorming for their hearing.

DATES: The meeting will be held on Thursday, June 25, 2020 at 12:00 p.m. PT.

Public Call Information:
Dial: 800–353–6461.
Conference ID: 4187024.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or (202) 681–0857.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–353–6461, conference ID number: 4187024. 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. You may also email Ana Victoria Fortes at *afortes@usccr.gov.*

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/apex/FACAPublicCommittee?id=a10t0000001gzlwAAA.* Please click on the ''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. Membership Update
III. Discuss and Vote on Project Proposal
IV. Begin Brainstorming for Hearing
V. Public Comment
VI. Good of the Order
VII. Adjournment

Dated: June 1, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–12139 Filed 6–4–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[5/5/2020 through 5/29/2020]

Firm name	Firm address	Date accepted for investigation	Product(s)
Trifecta Tool and Engineering, LLC	4648 Gateway Circle, Kettering, OH 45440.	5/18/2020	The firm manufactures molds for plastic injection molding.
Jordan Manufacturing Company	308 Reed Street, Belding, MI 48809	5/27/2020	The firm manufactures metal parts and components for machinery that lifts, handles, loads, or unloads goods.
U.S. Bedding, Inc	451 Quarry Street, Fall River, MA 02723	5/29/2020	The firm manufactures mattresses, mattress toppers, and pillows.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2020–12240 Filed 6–4–20; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

Public Combined Board and Board Committees Meeting

AGENCY: First Responder Network Authority (FirstNet Authority), National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Announcement of meeting.

SUMMARY: The FirstNet Authority Board will convene an open public meeting of the Board and the four (4) Board Committees, *Governance and Personnel, Network and Technology, Advocacy,* and *Finance* Committees.

DATES: June 17, 2020; 11:00 a.m. to 1:00 p.m. Eastern Standard Time (EST); WebEx.

ADDRESSES: The public meeting will be conducted via teleconference and WebEx only. Members of the public may listen to the meeting by dialing toll-free: 1–888–982–7296 and enter participant code 3161488#. If you experience technical difficulty, please contact the Conferencing Center Customer Service at: 1–866–900–1011. To view the slide presentation, the public may visit the URL: *https://www.mymeetings.com/nc/join/* and enter Conference Number: PWXW9653105 and Audience Passcode: 3161488. Alternatively, members of the public may view the slide presentation by directly visiting the URL: *https://www.mymeetings.com/nc/join.php?i=PWXW9653105&p=3161488&t=c.*

FOR FURTHER INFORMATION CONTACT:

For general information: Janell Smith, (202) 257–5929, *Janell.Smith@FirstNet.gov.*

For media inquiries: Ryan Oremland, (571) 665–6186, *Ryan.Oremland@FirstNet.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1401 *et seq.*) (Act) established the FirstNet Authority as an independent authority within NTIA. The Act directs the FirstNet Authority to ensure the building, deployment, and operation of a nationwide interoperable public safety broadband network. The FirstNet Authority Board is responsible for making strategic decisions regarding the FirstNet Authority's operations.

Matters to be Considered: The FirstNet Authority will post a detailed agenda for the Combined Board and Board Committees Meeting on *FirstNet.gov* prior to the meeting. The agenda topics are subject to change. Please note that the subjects discussed by the Board and Committees may involve commercial or financial information that is privileged or confidential, or other legal matters affecting the FirstNet Authority. As such, the Board and Committee Chairs may call for a vote to close the meetings only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Other Information: The public Combined Board and Board Committees meeting are accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Ms. Smith at (202) 257–5929 or email: *Janell.Smith@FirstNet.gov* at least five (5) business days (June 9) before the meeting.

Records: The FirstNet Authority maintains records of all Board proceedings. Minutes of the Board and Committee meetings will be available on *FirstNet.gov*.

Dated: June 1, 2020.

Janell Smith, Board Secretary,

First Responder Network Authority.

[FR Doc. 2020–12187 Filed 6–4–20; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Rapid Microbial Testing Methods Consortium

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST), an agency of the United States Department of Commerce, in support of efforts to develop Standards for Regenerative Medicine and Advanced Therapies, is establishing the Rapid Microbial Testing Methods (RMTM) Consortium (''Consortium'') for developing standards, including reference materials, related to rapid microbial testing for regenerative medicine products. The Consortium efforts are intended to advance rapid microbial measurement capabilities, provide measurement assurance strategies, support the development of microbial reference material(s), and collect data to support the development of best practices and standard methods. Participants will be required to sign a Cooperative Research and Development Agreement (CRADA). There is no cost for participating in the consortium.

DATES: The Consortium's activities will commence on September 15, 2020 (''Commencement Date''). NIST will accept letters of interest to participate in this Consortium on an ongoing basis. Acceptance of participants into the Consortium after the Commencement Date will depend on the availability of NIST resources.

ADDRESSES: Completed letters of interest or requests for additional information about the NIST RMTM Consortium can be directed via mail to Dr. Nancy Lin, Biosystems and Biomaterials Division of NIST's Material Measurement Laboratory, 100 Bureau Drive, Mail Stop 8543, Gaithersburg, Maryland 20899, or via electronic mail to *rmtm@nist.gov,* or by telephone at (301) 975–4935.

FOR FURTHER INFORMATION CONTACT: J'aime Maynard, CRADA Administrator, National Institute of Standards and Technology's Technology Partnerships Office, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899, by electronic mail to *Jaime.maynard@nist.gov,* or by telephone at (301) 975–8408.

SUPPLEMENTARY INFORMATION: The safety and quality of advanced therapies for regenerative medicine, including cell therapy, gene therapy, and tissue

engineered products, must be maintained prior to patient administration. The culture-based compendial methods currently used to assess product purity (specifically to ensure absence of microbial contamination) typically take weeks, which is inadequate for patients in urgent need of life-saving therapies. These methods are also incompatible with products that have a limited shelf-life and cannot meet good manufacturing practices required in process control and release testing. Alternative rapid microbial testing methods are needed to ensure fit for purpose safety assessments for this broad class of advanced therapeutics.

NIST is establishing the RMTM Consortium to address this need. The Consortium's purpose is to develop solutions and standards to support the use of rapid microbial testing methods for regenerative medicine products. The Consortium efforts will focus on the following areas:

(1) Repository of Relevant Microorganisms

NIST intends to establish a repository of microorganisms relevant to regenerative medicine product contamination, including contaminants found in products, in manufacturing environments, and other relevant microorganisms. Sets of microorganisms from the repository will be selected for interlaboratory studies and for incorporation into a candidate reference material, based on input from the Consortium. The reference material will be designed to increase confidence in the use of RMTMs and is expected to consist of multiple microorganisms. There will be opportunities for Consortium members to contribute relevant microorganisms to the repository.

(2) Rapid Microbial Testing Methods

The NIST RMTM Consortium intends to develop an inventory of potential measurement methods and protocols for rapid microbial testing of regenerative medicine products. This inventory will include molecular methods and protocols that have been adopted successfully for rapid microbial detection as well as considerations for implementing test methods and approaches to validate protocols.

(3) Interlaboratory Studies

The NIST RMTM Consortium intends to organize at least one interlaboratory study based on candidate reference materials with the goal of utilizing a common material to collect reproducible data on rapid microbial testing methods in support of measurement assurance and standards development.

There is no cost for participating in the consortium.

Process: Interested parties with relevant rapid microbial testing associated capabilities (see below), products, and/or technical expertise to support this Consortium should contact NIST using the information provided in the **ADDRESSES** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters. NIST will select participants who have submitted complete letters of interest based on the capabilities listed below. Eligibility will be determined solely by NIST based on information provided by interested parties and upon the availability of necessary resources to NIST.

To participate in the NIST RMTM Consortium, the eligible applicant will be required to sign a CRADA with NIST.

Requirements: Each letter of interest should provide the following information:

(1) A description of the experience in development or use of rapid microbial testing methods or production of regenerative medicine products or related expertise.

(2) Topic areas of interest for participation.

(3) List of interested party's anticipated participants.

Letters of interest may not include business proprietary information. NIST will not treat any information provided in response to this Notice as proprietary information. NIST will notify each organization of its eligibility. NIST does not guarantee participation in the Consortium to any organization submitting a letter of interest.

Authority: 15 U.S.C. 272; 21 U.S.C. 356g.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–12116 Filed 6–4–20; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA202]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Bluefish Advisory Panel will hold a public meeting, jointly with the Atlantic States Marine Fisheries Commission (ASMFC) Bluefish Advisory Panel.

DATES: The meeting will be held on Tuesday, June 23, 2020, from 9 a.m. to 12 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details on the proposed agenda, webinar listen-in access, and briefing materials will be posted at the MAFMC's website: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the Advisory Panel to develop a fishery performance report (FPR) and comment on draft alternatives for the Bluefish Allocation and Rebuilding Amendment. The intent of the FPR is to facilitate a venue for structured input from the Advisory Panel for the bluefish specifications process. The FPR will be used by the MAFMC's Scientific and Statistical Committee (SSC) and the Bluefish Monitoring Committee (MC) when reviewing 2021 management measures designed to achieve the recommended bluefish catch and landings limits.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: June 2, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–12214 Filed 6–4–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA218]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a three-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Due to federal and state travel restrictions and updated guidance from the Centers for Disease Control and Prevention related to COVID–19, this meeting will be conducted entirely by webinar.

DATES: The webinar meeting will be held on Tuesday, Wednesday, and Thursday, June 23, 24, and 25, 2020, beginning at 9 a.m. on June 23 and 8:30 a.m. on June 24 and 25.

ADDRESSES: All meeting participants and interested parties can register to join the webinar at *https://register.gotowebinar.com/rt/4299173335034253327.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492; *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, June 23, 2020

After introductions and brief announcements, the meeting will begin with reports from the Council Chairman and Executive Director, NMFS's Regional Administrator for the Greater Atlantic Regional Fisheries Office (GARFO), liaisons from the Northeast Fisheries Science Center (NEFSC) and Mid-Atlantic Fishery Management Council, staff from the Atlantic States Marine Fisheries Commission (ASMFC), and representatives from NOAA General Counsel, NOAA's Office of Law Enforcement, the U.S. Coast Guard, and the NMFS Highly Migratory Species Advisory Panel. The Council then will discuss Executive Order 13921, Promoting American Seafood Competitiveness and Economic Growth, which President Trump issued on May 7, 2020. Next, the Council will review its list of 2020–2024 research priorities and hear the Scientific and Statistical Committee's recommendations on any suggested revisions. Following some discussion, the Council will approve the final list. Members of the public then will have the opportunity to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes. These comments will be received through the webinar. A guide for how to publicly comment through the webinar is available on the Council website at *https://s3.amazonaws.com/nefmc.org/NEFMC-meeting-remote-participation_generic.pdf.*

Following the lunch break, the Council will take up the Ecosystem-Based Fishery Management (EBFM) Committee report and receive: (1) A presentation on draft EBFM public outreach materials produced by Green Fin Studio; and (2) a progress report from the EBFM Plan Development Team on the development of tangible worked examples to demonstrate the Council's example Fishery Ecosystem Plan (eFEP) for Georges Bank. The Council then will hear from its Skate Committee, which will provide a progress report on Committee actions related to Amendment 5 to the Northeast Skate Complex Fishery Management Plan (FMP). The Council will discuss whether to pursue the development of a limited access program for the skate wing and/or bait fisheries through this amendment. The Council then will adjourn for the day.

Wednesday, June 24, 2020

The Council will begin the day by receiving a preliminary report on approaches to calculating discards that are deducted from the monkfish annual catch target to determine total allowable landings for the monkfish fishery. The presentation will be followed by Council discussion. Next, the Scallop Committee will report on four items. The first will be Amendment 21 to the Atlantic Sea Scallop FMP, which is being developed to address: (1) Northern Gulf of Maine Management Area issues, (2) the Limited Access General Category (LAGC) possession limit, and (3) individual fishing quota (IFQ) transfers. The Council will select preferred alternatives for this amendment and approve the Draft Environmental Assessment for public hearings. The Council also will discuss the timeline for this action. Second, the Council will review and approve 2021–2022 priorities for the Scallop Research Set-Aside Program. Third, the Council will initiate Framework Adjustment 33, which will include 2021 fishing year specifications and 2022 default specifications. The Council will discuss the timeline for the framework given delays in resource surveys due to the COVID–19 situation. Finally, the Scallop Committee will provide feedback on Executive Order 13921.

Following the lunch break, the Habitat Committee will report on several items with contributions from partner presenters. Agenda items include: (1) A Committee update on the development of habitat policies for aquaculture, submarine cables, and floating offshore wind technology; (2) an update on the Northeast Regional Marine Fish Habitat Assessment; (3) a Bureau of Ocean Energy Management (BOEM) briefing on the June 2020 Supplemental Environmental Impact Statement for the Vineyard Wind project and other BOEM updates; (4) a NOAA Fisheries briefing on the Habitat Climate Vulnerability Assessment for the Northeast Region; and (5) an update from the Responsible Offshore Science Alliance. Next, the Council will receive a progress report on the collaborative effort between the Northeast Regional Ocean Council and the Responsible Offshore Development Alliance to update commercial fisheries data on the Northeast and Mid-Atlantic Ocean Data Portals. The Council will spend the remainder of the afternoon on the Atlantic Herring Committee report, which will cover three items. The Council will receive an update on Framework Adjustment 7 to the Atlantic Herring FMP, which is being developed to protect spawning herring on Georges Bank. As part of this agenda item, the Council will receive a report on a recent leadership conference call that was held with ASMFC to discuss Atlantic herring management. The Council also will receive an update on Framework Adjustment 8, which includes fishing year 2021–2023 specifications. The Council potentially may approve the range of alternatives being developed as part of this framework to adjust measures in the Atlantic Herring FMP that may inhibit the Atlantic mackerel fishery from achieving optimum yield. Finally, the Council will receive Herring Committee feedback on Executive Order 13921. After this discussion, the Council will adjourn for the day.

Thursday, June 25, 2020

The Council will begin the day with the Small-Mesh Multispecies (Whiting)

Report. The Council is expected to take final action on Framework Adjustment 62 to the Northeast Multispecies FMP, which focuses on measures to rebuild southern red hake. The Whiting Committee also will provide feedback to the Council on Executive Order 13921. Next, the Council will receive an overview of the Atlantic Cod Stock Structure Working Group report, which will be followed by a presentation on the peer review of report. The Council will discuss the report and peer review findings. The GARFO Regional Administrator then will provide a briefing on a petition for rulemaking on Atlantic cod and request that the Council consult with NMFS on this matter. The Council will engage in a discussion on how to address issues in the petition that may have merit.

Following the lunch break, the Council will spend the full afternoon on the Groundfish Committee report, which includes several items. The Council will receive an overview of comments received during recent webinar public hearings for Groundfish Monitoring Amendment 23 and then discuss next steps and the timeline for final action. In a follow-up to the April meeting, the Council will discuss and potentially approve Groundfish Committee recommendations for adjustments to commercial and recreational measures to mitigate the impacts of the COVID–19 pandemic. This discussion may include a possible request for secretarial emergency action for measures related to commercial carry-over provisions, as well as recreational measures for Gulf of Maine haddock and cod. The Council also will initiate Framework Adjustment 61 to the Northeast Multispecies FMP, which will include: total allowable catches for U.S./Canada stocks of Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder; 2021–2023 specifications for roughly half of the groundfish stocks; and other measures. Finally, the Groundfish Committee will provide feedback on Executive Order 13921. The Council then will close out the meeting with other business.

Although non-emergency issues not contained on this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is being conducted entirely by webinar. Requests for auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: June 2, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–12215 Filed 6–4–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Approval of a Boundary Expansion for the Elkhorn Slough National Estuarine Research Reserve

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval of boundary expansion and availability of a final environmental assessment; Finding of No Significant Impact.

SUMMARY: In accordance with applicable federal regulations, notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA)'s Office for Coastal Management approved the final environmental assessment of a proposed boundary expansion for the Elkhorn Slough National Estuarine Research Reserve in Watsonville, California. NOAA determined that the boundary expansion would not have significant environmental impacts and, therefore, issued a Finding of No Significant Impact (FONSI). The final environmental assessment describes the alternatives considered, including the preferred alternative to add nine parcels to and remove one parcel from the existing approved boundary, which would result in a net increase of 299.773 acres in size to the boundary. NOAA prepared a draft environmental assessment to analyze the effects of the requested changes and solicited public comment before approving the request [84 FRN 57702]. The purpose of this notice is to inform the public of NOAA's approval of the boundary expansion and of the availability of the final environmental assessment.

ADDRESSES: The final environmental assessment and FONSI can be downloaded or viewed at *https://coast.noaa.gov/czm/compliance/.* The document is also available by sending a written request to the point of contact identified below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Elaine Vaudreuil of NOAA's Office for Coastal Management, by email at *Elaine.Vaudreuil@noaa.gov,* phone at 240–533–0821, or mail at: 1305 East-West Hwy., N/OCM, Silver Spring, MD 20910.

Authority: 16 U.S.C. 1451 *et seq;* 15 CFR 921.33.

Keelin S. Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2020–12223 Filed 6–4–20; 8:45 am]

BILLING CODE 3510–08–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed additions and deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

DATES: *Comments must be received on or before:* July 5, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN(s)—Product Name(s):
MR 13037—Microwave Bacon Crisper
MR 13039—Microwave Popcorn Popper
MR 13065—Microwave Steamer
MR 13074—Set, Bowls, Glass, Prep, 4 Piece
MR 13075—Set, Mini Grate and Slice
MR 13079—Set, Glass Containers, Smart Seal, 12 Piece
MR 13151—POP 3 Pc Slim Container Set
MR 13152—POP 4 Pc Baking Accessories Set
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
MR 10767—Saver, Grapefruit, Includes Shipper 20767
MR 13050—Iced Tea Tumbler, 16 Ounces, Green
MR 13051—Iced Tea Tumbler, 16 Ounces, Pink
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
MR 13032—Shelf Liner, Biodegradable, Clear
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Military Resale-Defense Commissary Agency
NSN(s)—Product Name(s):
MR 11129—Bag, Paper, Lunch, 50 Count
Mandatory Source of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: Military Resale-Defense Commissary Agency

Services

Service Type: Custodial Service
Mandatory for: US Air Force, USAF Space Command (AFSPC), Peterson Air Force Base and Cheyenne Mountain Air Force Station, Colorado Springs, CO
Recommended Mandatory Source of Supply: Professional Contract Services, Inc., Austin, TX
Contracting Activity: FA2517 21 CONS, PETERSON AFB, CO
Service Type: Laundry Service
Mandatory for: U.S. Navy, Navy Medicine Readiness and Training Unit, Naval Support Activity Mid-South, Millington, TN
Mandatory Source of Supply: Wiregrass Rehabilitation Center, Inc., Dothan, AL
Contracting Activity: DEPT OF THE NAVY, NAVAL HOSPITAL PENSACOLA FL

Deletions

The following products are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s):
4220–00–926–9459—Vest, Life Preserver, USN, Yellow, Small
4220–00–926–9461—Cover, Protective, Life Preserver
4220–00–926–9460—Cover, Protective, Life Preserver
4220–00–926–9462—Cover, Protective, Life Preserver
4220–00–926–9464—Cover, Protective, Life Preserver
4220–00–926–9465—Cover, Protective, Life Preserver
4220–00–926–9466—Cover, Protective, Life Preserver
4220–00–926–9467—Cover, Protective, Life Preserver
4220–00–926–9469—Cover, Protective, Life Preserver
4220–00–926–9471—Cover, Protective, Life Preserver
4220–00–926–9472—Cover, Protective, Life Preserver
4220–00–926–9473—Cover, Protective, Life Preserver
4220–00–926–9474—Cover, Protective, Life Preserver
4220–00–926–9475—Cover, Protective, Life Preserver
4220–00–926–9476—Cover, Protective, Life Preserver
4220–00–926–9478—Cover, Protective, Life Preserver
4220–00–926–9479—Cover, Protective, Life Preserver
Mandatory Source of Supply: Mississippi Industries for the Blind, Jackson, MS; Lions Volunteer Blind Industries, Inc., Morristown, TN
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA
NSN(s)—Product Name(s):
4220–00–926–9463—Cover, Protective, Life Preserver
4220–00–926–9470—Cover, Protective, Life Preserver
4220–00–926–9477—Cover, Protective, Life Preserver
Mandatory Source of Supply: Lions Volunteer Blind Industries, Inc., Morristown, TN
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA
NSN(s)—Product Name(s):
6532–00–299–9629—Trousers, Operating, Surgical, X-Large
6532–00–299–9630—Trousers, Operating, Surgical, Medium
6532–00–299–9631—Trousers, Operating, Surgical, Small
6532–00–299–9628—Trousers, Operating, Surgical, Large
Mandatory Source of Supply: TradeWinds Services, Inc., Merrillville, IN
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA
NSN(s)—Product Name(s):
MR 462—Grocery Shopping Tote Bag, Laminated, Winter Club Pack, Winter Scene, Small
MR 464—Grocery Shopping Tote Bag, Laminated, Winter Club Pack, Spring Scene, Small
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency

Michael R. Jurkowski,
Deputy Director, Business & PL Operations.

[FR Doc. 2020–12191 Filed 6–4–20; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* July 5, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 9/6/2019,the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSN(s)—Product Name(s):

8405–01–683–2570—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 32–S
8405–01–683–2572—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 32–R
8405–01–683–2542—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 28–S
8405–01–683–2543—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 28–R
8405–01–683–2546—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 29–S
8405–01–683–2547—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 29–R
8405–01–683–2548—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 29–L
8405–01–683–2549—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 30–S
8405–01–683–2550—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 30–L
8405–01–683–2551—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 30–R
8405–01–683–2554—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 30–XL
8405–01–683–2556—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 31–S
8405–01–683–2558—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 31–R
8405–01–683–2628—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 32–L
8405–01–683–2630—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 32–XL
8405–01–683–2632—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 33–R
8405–01–683–2633—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 33–S
8405–01–683–2635—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 33–L
8405–01–683–2636—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 33–XL
8405–01–683–2637—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 34–S
8405–01–683–2638—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 34–R
8405–01–683–2639—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 34–L
8405–01–683–2640—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 34–XL
8405–01–683–2644—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 35–S
8405–01–683–2645—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 35–R
8405–01–683–2647—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 36–S
8405–01–683–2648—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 35–L
8405–01–683–2650—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 36–R
8405–01–683–2651—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 36–L
8405–01–683–2652—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 36–XL
8405–01–683–2653—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 37–S
8405–01–683–2660—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 37–R
8405–01–683–2662—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 37–L
8405–01–683–2666—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 38–S
8405–01–683–2667—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 38–XL
8405–01–683–2668—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 38–L
8405–01–683–2669—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 38–R
8405–01–683–2670—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 39–S
8405–01–683–2671—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 39–R
8405–01–683–2672—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 39–L
8405–01–683–2673—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 40–S
8405–01–683–2674—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 40–R
8405–01–683–2675—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 40–XL
8405–01–683–2676—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 40–L
8405–01–683–2677—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 41–S
8405–01–683–2678—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 41–R
8405–01–683–2679—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 41–L
8405–01–683–2680—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 42–R
8405–01–683–2682—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 42–XL
8405–01–683–2684—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 44–R
8405–01–683–2685—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 44–L
8405–01–683–2686—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 44–XL
8405–01–683–2687—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 46–R
8405–01–683–2688—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 46–XL
8405–01–683–2421—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 29–R
8405–01–683–2423—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 30–R
8405–01–683–2425—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 30–L
8405–01–683–2427—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 30–XL
8405–01–683–2428—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 31–R
8405–01–683–2429—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 32–R
8405–01–683–2430—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 31–L
8405–01–683–2431—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 32–L
8405–01–683–2432—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 32–XL
8405–01–683–2433—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 33–S
8405–01–683–2435—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 33–R

8405–01–683–2436—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 33–L
8405–01–683–2437—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 33–XL
8405–01–683–2438—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 34–S
8405–01–683–2439—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 34–R
8405–01–683–2440—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 34–L
8405–01–683–2441—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 34–XL
8405–01–683–2442—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 35–S
8405–01–683–2443—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 35–R
8405–01–683–2444—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 35–L
8405–01–683–2445—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 36–S
8405–01–683–2446—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 36–R
8405–01–683–2447—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 36–L
8405–01–683–2452—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 36–XL
8405–01–683–2453—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 37–S
8405–01–683–2455—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 37–L
8405–01–683–2456—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 37–R
8405–01–683–2457—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 38–S
8405–01–683–2459—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 38–R
8405–01–683–2461—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 38–L
8405–01–683–2462—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 38–XL
8405–01–683–2463—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 39–S
8405–01–683–2464—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 39–R
8405–01–683–2465—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 39–L
8405–01–683–2466—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 40–S
8405–01–683–2467—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 40–R
8405–01–683–2468—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 40–L
8405–01–683–2469—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 40–XL
8405–01–683–2477—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 41–S
8405–01–683–2478—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 41–R
8405–01–683–2481—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 42–R
8405–01–683–2482—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 44–R
8405–01–683–2483—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 42–XL
8405–01–683–2484—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 44–L
8405–01–683–2485—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 44–XL
8405–01–683–2488—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 46–R
8405–01–683–2489—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 46–XL
8405–01–683–2511—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 26–R
8405–01–683–9562—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 42–L
8405–01–683–9565—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 46–L
8405–01–683–9566—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 42–S
8405–01–683–9579—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 42–L
8405–01–683–9595—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 42–S
8405–01–683–2568—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 31–L
8405–01–683–2486—Trouser, Army Green Service Uniform, Men's, Athletic Fit, Heritage Taupe, 41–L
8405–01–683–9594—Trouser, Army Green Service Uniform, Men's, Classic Fit, Heritage Taupe, 46–L

Mandatory Source of Supply: VGS, Inc., Cleveland, OH
Contracting Activity: DEPT OF THE ARMY, W6QK ACC–APG NATICK

Deletions

On 5/1/2020, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
6160–01–184–0643—Retainer Battery
Mandatory Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: DLA AVIATION, RICHMOND, VA

NSN(s)—Product Name(s):
MR 13110—Cake Cutter, Slice N' Easy
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
7340–00–J19–1300—Spoon, Picnic, Plastic
7340–00–J19–1300a—Spoon, Picnic, Plastic
7340–00–J19–2052a—Spoon, Picnic, Plastic
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Services

Service Type: Mailroom Operation
Mandatory for: 14th U.S. Coast Guard District, 300 Ala Moana Boulevard, Honolulu, HI
Mandatory Source of Supply: Goodwill Contract Services of Hawaii, Inc., Honolulu, HI
Contracting Activity: U.S. COAST GUARD, SILC BSS

Service Type: Food Service Attendants
Mandatory for: New Hampshire Air National Guard, Pease Air National Guard Base,

Pease ANGB, NH
Mandatory Source of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: DEPT OF THE ARMY, W7NN USPFO ACTIVITY NH ARNG

Service Type: Janitorial/Custodial
Mandatory for: US Army, IL027 Forest Park AFRC, Forest Park, IL
Mandatory Source of Supply: Jewish Child and Family Services, Chicago, IL
Contracting Activity: DEPT OF THE ARMY, W6QM MICC FT MCCOY (RC)

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–12196 Filed 6–4–20; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, June 10, 2020; 1:30 p.m.

PLACE: via Teleconference.

STATUS: Commission Meeting—Closed to the Public.

MATTERS TO BE CONSIDERED: Staff will brief the Commission on the status of a compliance program.

CONTACT PERSON FOR MORE INFORMATION: Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504–7479.

Dated: June 3, 2020.

Alberta E. Mills,

Secretary.

[FR Doc. 2020–12336 Filed 6–3–20; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Federal Need Analysis Methodology for the 2021–22 Award Year—Federal Pell Grant, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, Iraq and Afghanistan Service Grant, and TEACH Grant Programs

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the annual updates to the tables used in the statutory Federal Need Analysis Methodology that determines a student's expected family contribution (EFC) for award year (AY) 2021–22 for student financial aid programs, Catalog of Federal Domestic Assistance (CFDA) numbers 84.063, 84.033, 84.007, 84.268, 84.408, and 84.379. This notice alerts the financial aid community and the broader public to these required annual updates used in the determination of student aid eligibility.

FOR FURTHER INFORMATION CONTACT: Marya Dennis, U.S. Department of Education, Room 63G2, Union Center Plaza, 830 First Street NE, Washington, DC 20202–5454. Telephone: (202) 377–3385. Email: *Marya.Dennis@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: Part F of title IV of the Higher Education Act of 1965, as amended (HEA), specifies the criteria, data elements, calculations, and tables the Department of Education (Department) uses in the Federal Need Analysis Methodology to determine the EFC.

Section 478 of the HEA requires the Secretary to annually update the following four tables for price inflation—the Income Protection Allowance (IPA), the Adjusted Net Worth (NW) of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates. The updates are based, in general, upon increases in the Consumer Price Index (CPI).

For AY 2021–22, the Secretary is charged with updating the IPA for parents of dependent students, adjusted NW of a business or farm, the education savings and asset protection allowance, and the assessment schedules and rates to account for inflation that took place between December 2019 and December 2020. However, because the Secretary must publish these tables before December 2020, the increases in the tables must be based on a percentage equal to the estimated percentage increase in the Consumer Price Index for All Urban Consumers (CPI–U) for 2020. The Secretary must also account for any under- or over-estimation of inflation for the preceding year.

In developing the table values for the 2020–21 AY, the Secretary assumed a 2.4 percent increase in the CPI–U for the period December 2018 through December 2019. The actual inflation for this time period was 2.3 percent. The Secretary estimates that the increase in the CPI–U for the period December 2019 through December 2020 will be 2.0 percent.

Additionally, section 601 of the College Cost Reduction and Access Act of 2007 (CCRAA, Pub. L. 110–84) amended sections 475 through 478 of the HEA affecting the IPA tables for the 2009–10 through 2012–13 AYs and required the Department to use a percentage of the estimated CPI to update the table in subsequent years. These changes to the IPA impact dependent students, as well as independent students with dependents other than a spouse and independent students without dependents other than a spouse. This notice includes the new 2021–22 AY values for the IPA tables, which reflect the CCRAA amendments. The updated tables are in sections 1 (Income Protection Allowance), 2 (Adjusted Net Worth of a Business or Farm), and 4 (Assessment Schedules and Rates) of this notice.

Under section 478(d) of the HEA, the Secretary must also revise the education savings and asset protection allowances for each AY. The Education Savings and Asset Protection Allowance table for AY 2021–22 has been updated in section 3 of this notice.

Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the employment expense allowance, adjusted for inflation. This calculation is based on increases in the Bureau of Labor Statistics' marginal costs budget for a two-worker family compared to a one-worker family. The items covered by this calculation are: Food away from home, apparel, transportation, and household furnishings and operations. The Employment Expense Allowance table for AY 2021–22 has been updated in section 5 of this notice.

Section 478(g) of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data maintained by the Internal Revenue Service. This table has been updated in section 6 of this notice.

The HEA requires the following annual updates:

1. *Income Protection Allowance.* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. The allowance varies by family size. The IPA for dependent students is $6,970. The IPAs for parents of dependent students for AY 2021–22 are as follows:

PARENTS OF DEPENDENT STUDENTS

Family size	Number in college				
	1	2	3	4	5
2	$19,440	$16,110			
3	24,200	20,900	$17,570		
4	29,890	26,570	23,260	$19,930	
5	35,270	31,940	28,640	25,310	$22,000
6	41,250	37,930	34,620	31,300	27,990

For each additional family member add $4,660. For each additional college student subtract $3,310.

The IPAs for independent students with dependents other than a spouse for AY 2021–22 are as follows:

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

Family size	Number in college				
	1	2	3	4	5
2	$27,450	$22,760			
3	34,180	29,510	$24,810		
4	42,200	37,520	32,850	$28,150	
5	49,800	45,100	40,430	35,750	$31,080
6	58,240	53,550	48,900	44,180	39,520

For each additional family member add $6,580. For each additional college student subtract $4,670.

The IPAs for single independent students and independent students without dependents other than a spouse for AY 2021–22 are as follows:

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

Marital status	Number in college	
	1	2
Single	$10,840	
Married	17,380	$10,840

2. *Adjusted Net Worth of a Business or Farm.* A portion of the full NW (assets less debts) of a business or farm is excluded from the calculation of an EFC because (1) the income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets.

The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the NW of a business or farm is	Then the adjusted NW is
Less than $1	$0.
$1 to $140,000	$0 + 40% of NW.
$140,001 to $415,000	$56,000 + 50% of NW over $140,000.
$415,001 to $695,000	$193,500 + 60% of NW over $415,000.
$695,001 or more	$361,500 + 100% of NW over $695,000.

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of NW (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables: One for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS, AND INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE, AND INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the older parent is, or If the age of the independent student is	And the older parent or the independent student is	
	Married	Single
	Then the allowance is	
25 or less	0	0
26	400	100
27	700	300
28	1,100	400
29	1,500	600
30	1,800	700
31	2,200	800
32	2,600	1,000
33	2,900	1,100
34	3,300	1,300
35	3,700	1,400
36	4,000	1,500
37	4,400	1,700
38	4,800	1,800
39	5,100	2,000
40	5,500	2,100
41	5,600	2,200
42	5,700	2,200
43	5,900	2,300
44	6,000	2,300
45	6,200	2,400
46	6,300	2,400
47	6,500	2,500
48	6,600	2,500
49	6,800	2,600
50	7,000	2,700
51	7,100	2,700
52	7,300	2,800
53	7,500	2,900
54	7,700	2,900
55	7,900	3,000
56	8,100	3,100
57	8,400	3,100
58	8,600	3,200
59	8,800	3,300
60	9,100	3,400
61	9,300	3,500
62	9,600	3,600
63	9,900	3,700
64	10,200	3,800
65 or older	10,500	3,900

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates—one for parents of dependent students and one for independent students with dependents other than a spouse—are used to determine the EFC from family financial resources toward educational expenses.

For dependent students, the EFC is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the EFC is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The contribution of parents of dependent students, and independent students with dependents other than a spouse, is computed according to the following schedule:

If AAI is	Then the contribution is
Less than −$3,409	−$750
−$3,409 to $17,400	22% of AAI.
$17,401 to $21,800	$3,828 + 25% of AAI over $17,400.
$21,801 to $26,200	$4,928 + 29% of AAI over $21,800.
$26,201 to $30,700	$6,204 + 34% of AAI over $26,200.
$30,701 to $35,100	$7,734 + 40% of AAI over $30,700.
$35,101 or more	$9,494 + 47% of AAI over $35,100.

5. *Employment Expense Allowance.* This allowance for employment-related expenses—which is used for the parents of dependent students and for married independent students—recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based on the marginal differences in costs for a two-worker family compared to a one-worker family. The items covered by these additional expenses are: Food away from home, apparel, transportation, and household furnishings and operations.

The employment expense allowance for parents of dependent students, married independent students without dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $4,000 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* The allowance for State and other taxes protects a portion of parents' and students' incomes from being considered available for postsecondary educational expenses. There are four categories for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse.

PERCENT OF INCOME PAID IN STATE TAXES BY STATE, DEPENDENCY STATUS, AND INCOME LEVEL

State	Parents of dependent students and independent students with dependents other than a spouse		Dependent students and independent students without dependents other than a spouse
	Income under $15,000	Income $15,000 & up	All income
Alabama	3	2	2
Alaska	2	1	0
Arizona	4	3	2
Arkansas	4	3	3
California	9	8	6
Colorado	4	3	3
Connecticut	9	8	5
Delaware	5	4	3
District of Columbia	7	6	6
Florida	3	2	1
Georgia	5	4	4
Hawaii	5	4	4
Idaho	5	4	4
Illinois	6	5	3
Indiana	4	3	3
Iowa	5	4	3
Kansas	4	3	3
Kentucky	5	4	4
Louisiana	3	2	2
Maine	6	5	3
Maryland	8	7	6
Massachusetts	7	6	4
Michigan	5	4	3
Minnesota	7	6	5
Mississippi	3	2	2
Missouri	5	4	3
Montana	5	4	3
Nebraska	5	4	3
Nevada	3	2	1
New Hampshire	4	3	1
New Jersey	9	8	5
New Mexico	3	2	2
New York	10	9	7
North Carolina	5	4	3
North Dakota	2	1	1
Ohio	5	4	3
Oklahoma	3	2	2
Oregon	7	6	5
Pennsylvania	5	4	3
Rhode Island	6	5	4
South Carolina	4	3	3
South Dakota	2	1	1
Tennessee	2	1	1
Texas	3	2	1
Utah	5	4	4
Vermont	6	5	3
Virginia	6	5	4
Washington	3	2	1
West Virginia	3	2	3
Wisconsin	6	5	4

PERCENT OF INCOME PAID IN STATE TAXES BY STATE, DEPENDENCY STATUS, AND INCOME LEVEL—Continued

State	Parents of dependent students and independent students with dependents other than a spouse		Dependent students and independent students without dependents other than a spouse
	Income under $15,000	Income $15,000 & up	All income
Wyoming	2	1	1
Other	2	1	1

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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Program Authority: 20 U.S.C. 1087rr.

Mark A. Brown,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2020–12169 Filed 6–4–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0054]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Special Education-Individual Reporting on Regulatory Compliance Related to the Personnel Development Program's Service Obligation and the Government Performance and Results Act (GPRA)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 6, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Richelle Davis, 202–245–7401.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Special Education-Individual Reporting on Regulatory Compliance Related to the Personnel Development Program's Service Obligation and the Government Performance and Results Act (GPRA).

OMB Control Number: 1820–0686.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 34,262.

Total Estimated Number of Annual Burden Hours: 8,328.

Abstract: The Office of Special Education Program's Personnel Development Program aims to increase the supply of qualified personnel in the field of special education. The program awards competitive grants to Institutions of Higher Education to support scholars who are preparing to provide special education and related services to children and youth with disabilities. Scholars who receive funding agree to work in the field of special education or related services for two years for each year of support they receive.

The Personnel Development Program Data Collection System collects data from grantees, scholars, and employers who verify that scholars are employed in the field of special education or related services. This data collection serves three program needs. First, data from grantees, scholars, and employers are necessary to assess the performance of the Personnel Development Program on its Government Performance Results Act measures. Second, data from all three sources are necessary to determine if scholars comply with the service obligation requirements. And finally, project-specific performance data are

collected from grantees for project monitoring and program improvement.

The forms in this package are updates to existing Office of Management and Budget approved forms (1820–0686) which expire on 8/31/2020.

Dated: June 2, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–12179 Filed 6–4–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0055]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Loan Discharge Application: Forgery

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 6, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Loan Discharge Application: Forgery.

OMB Control Number: 1845–0148.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 2,786.

Total Estimated Number of Annual Burden Hours: 2,786.

Abstract: This requests is for an extension of the information collection to approve a form used to obtain information from federal student loan borrowers who allege that the loan(s) in their name were the result of a forgery. This information is used by the Secretary to make a determination of forgery for the Direct Loans, FFEL Program Loans, and Federal Perkins Loans held by the Department. This information collection stems from the common law legal principal of forgery, which is not reflected specifically in the Department's statute or regulations, but with which the Department must comply.

Dated: June 2, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–12178 Filed 6–4–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision for Disposition of Depleted Uranium Oxide Conversion Product Generated From Department of Energy's Inventory of Depleted Uranium Hexafluoride

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy's (DOE) Office of Environmental Management (EM) is announcing its decision to implement its Preferred Alternative, as documented in the *Final Supplemental Environmental Impact Statement for Disposition of Depleted Uranium Oxide Conversion Product Generated from DOE's Inventory of Depleted Uranium Hexafluoride* (DOE/EIS–0359–S1; DOE/EIS–0360–S1) (Final DU Oxide SEIS). Specifically, DOE has decided to disposition depleted uranium (DU) oxide at one or more of the disposal sites evaluated in the Final DU Oxide SEIS: The Energy*Solutions* low-level radioactive waste (LLW) disposal facility near Clive, Utah; the Waste Control Specialists LLC (WCS) LLW disposal facility near Andrews, Texas; and the Nevada National Security Site (NNSS) LLW disposal facility in Nye County, Nevada. DOE will only ship to the selected commercial site(s) if the facility is authorized to receive DU oxide. DOE considered the potential environmental impacts of the No Action Alternative and the Action Alternatives; each alternative's ability to meet DOE's purpose and need; direct, indirect, and cumulative impacts of each alternative; and public comments on the Final DU Oxide SEIS. This ROD has been prepared in accordance with the regulations of the Council on Environmental Quality for implementing the National Environmental Policy Act of 1969 (NEPA) and DOE's NEPA Implementing Procedures.

ADDRESSES: This ROD, the Final DU Oxide SEIS on which it is based, and related information are available at *http://www.energy.gov/em/disposition-uranium-oxide-conversion-depleted-uranium-hexafluoride* and on the DOE NEPA website at: *www.energy.gov/nepa.* These may also be found at Public Reading Rooms and Libraries detailed in the Notice of Availability of the Final DU Oxide SEIS.

FOR FURTHER INFORMATION CONTACT: For further information about the Final DU Oxide SEIS, please contact Ms. Julia Donkin, Office of Waste Disposal, by email at *DUF6_NEPA@em.doe.gov* or by telephone 202–586–5000. For information on DOE's NEPA process, please contact Mr. William Ostrum, EM NEPA Compliance Officer, Office of Regulatory Compliance, U.S. Department of Energy, 1000 Independence Avenue SW, EM–4.31, Washington, DC 20585; or email at *William.Ostrum@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

DOE prepared the *Final Supplemental Environmental Impact Statement for Disposition of Depleted Uranium Oxide Conversion Product Generated from DOE's Inventory of Depleted Uranium Hexafluoride* (DOE/EIS–0359–S1; DOE/EIS–0360–S1) (Final DU Oxide SEIS) in accordance with the NEPA (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's NEPA regulations (40 CFR parts 1500–1508), and DOE's NEPA Implementing Procedures (10 CFR part 1021).

On June 18, 2004, the DOE issued environmental impact statements for the construction and operation of facilities to convert depleted uranium hexafluoride (DUF_6) to DU oxide at DOE's Paducah Site in Kentucky and Portsmouth Site in Ohio (69 FR 34161). Both the *Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Paducah, Kentucky Site* (DOE/EIS–0359) and the *Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth, Ohio Site* (DOE/EIS–0360) (collectively, the ''2004 EISs'') were prepared to evaluate and implement DOE's DUF_6 long-term management program.

On July 27, 2004, RODs were published for the 2004 Final EISs (69 FR 44654; 69 FR 44649). In the RODs, DOE decided that it would build facilities at both the Paducah site and the Portsmouth site and convert DOE's inventory of DUF_6 to DU oxide. DOE did not include decisions with respect to specific disposal location(s) for DU oxide, but instead informed the public it would make the decisions later, and additional supplemental NEPA analysis would be provided for review and comment.

DOE announced its intent to prepare an SEIS on August 26, 2016 (81 FR 58921). On September 7, 2016, DOE issued a correction to the **Federal Register** notice 81 FR 58921 (81 FR 61674) to correct an error regarding the agency that granted the amendment to the WCS facility near Andrews, Texas, to allow disposal of depleted uranium. DOE prepared the Draft DU Oxide SEIS and distributed it to stakeholders and interested parties. Following the U.S. Environmental Protection Agency Notice of Availability of the Draft DU Oxide SEIS (83 FR 67282; December 28, 2018), DOE invited the public to comment on the Draft DU Oxide SEIS and conducted public hearings. In response to requests, DOE extended the public comment period an additional 21 days (84 FR 1716). After considering comments received on the Draft DU Oxide SEIS, DOE prepared a Final DU Oxide SEIS and on April 24, 2020, EPA issued a Notice of Availability for that document (85 FR 23022).

Purpose and Need for Agency Action in the Final DU Oxide SEIS

The purpose and need for this action in the Final DU Oxide SEIS is to dispose of DU oxide resulting from converting DOE's DUF_6 inventory to a more stable chemical form and to dispose of other LLW and mixed LLW (MLLW) (*i.e.,* empty and heel cylinders, calcium fluoride, ancillary LLW and MLLW) generated during the conversion process at the DOE DUF_6 conversion facilities at the Paducah and Portsmouth sites. If a beneficial use cannot be found for the DU oxide, DOE may need to dispose of all or a portion of the inventory. This need follows directly from the decisions presented in the 2004 RODs for the 2004 Final EISs, in which DOE deferred any decision related to the transportation and disposition of DU oxide at off-site disposal facilities.

Proposed Action in the Final DU Oxide SEIS

DOE's Proposed Action in the Final DU Oxide SEIS is to transport and dispose of DU oxide and other LLW and MLLW generated during the conversion process at the Paducah and Portsmouth sites to a LLW disposal facility. To implement the Proposed Action, DOE identified three Action Alternatives. Under the Action Alternatives, if a beneficial use cannot be found, DU oxide would be transported to and disposed of at one or more of three disposal facilities: (1) The Energy*Solutions* LLW disposal facility near Clive, Utah; (2) the WCS LLW disposal facility near Andrews, Texas; and (3) the NNSS LLW disposal facility in Nye County, Nevada. Approximately 46,150 cylinders (or 41,016 bulk bags and 46,150 empty cylinders) of DU oxide would be shipped from Paducah and 22,850 cylinders (or 18,142 bulk bags and 22,850 empty cylinders) of DU oxide would be shipped from the Portsmouth site over the life of the project. Under the No Action Alternative, the DU oxide cylinders would remain in storage at the Paducah and Portsmouth sites and would not be transported to a disposal facility. As decided in the RODs for the 2004 EISs, excess empty and heel cylinders, calcium fluoride and ancillary LLW and MLLW would be transported and disposed of under all the evaluated alternatives, including the No Action Alternative.

Additionally, under the USEC Privatization Act (42 U.S.C. 2297h–11), DOE is required to accept LLW and MLLW from a uranium enrichment facility licensed by the U.S. Nuclear Regulatory Commission. If requested by the generator, DOE must accept the DU once it is determined to be LLW. Under the USEC Privatization Act, the licensee must reimburse DOE for its costs to disposition the LLW and MLLW (including DU). At the present time, there are no plans or proposals for DOE to convert additional DUF_6 and dispose of additional DU oxide cylinders, beyond the current inventory for which it has responsibility. In anticipation of the potential future receipt of commercial DUF_6, DOE has estimated the impacts from management of 150,000 metric tons (165,000 tons; approximately 12,500 cylinders) of commercial DUF_6 as a reasonably foreseeable future action for cumulative impacts that would take place after the management of DOE DU oxide.

Alternatives Analyzed in the Final DU Oxide SEIS

No Action Alternative. Under the No Action Alternative, DU oxide containers would not be transported for disposal. Instead, DU oxide containers would be stored indefinitely at the Paducah and Portsmouth sites where the DU oxide is produced. Storage was analyzed for a 100 year period, although storage could extend beyond that 100 year period. Annual impacts beyond 100 years would be similar to those expected during the 100-year period of analysis.

Action Alternatives. Under the Action Alternatives, if a beneficial use cannot be found, DU oxide would be transported and disposed of at one or more of the disposal facilities identified as Energy*Solutions,* WCS, and NNSS. The Final DU Oxide SEIS conservatively assumes that under the Action Alternatives, DU oxide in cylinders and drums would be stored for up to 76 years at the Paducah site and 47 years at the Portsmouth site. Bulk bags are not appropriate for long-term storage, and therefore, would not be used for long-term storage of DU oxide under the No Action Alternative. All activities at the Paducah and Portsmouth sites would remain the same under these Action Alternatives, except for the destination of the DU oxide container shipments. The containers in which the DU oxide is placed (cylinders, bulk bags, or drums) would be used as the transportation package and disposal container, and would be shipped in compliance with U.S. Department of

Transportation requirements and meet disposal site waste acceptance criteria. Damaged DU oxide containers would be repaired, replaced, or placed in an overpack enclosure that would provide protection to safely handle, transport and dispose of the container.

Preferred Alternative. As noted in the Final DU Oxide SEIS, DOE's Preferred Alternative is to dispose of DU oxide at one or more of the disposal sites (Energy*Solutions,* WCS, and/or NNSS), understanding that any disposal location(s) must have a current license or authorization to dispose of DU oxide at the time shipping to a location is initiated. While DOE's Preferred Alternative as announced in the Final DU Oxide SEIS, is one or a combination of the Action Alternatives over the No Action Alternative, DOE does not have a preference among the Action Alternatives. Any decision related to the Proposed Action may also depend on competitive procurement practices necessary to contract for the transportation and disposal of the DU oxide.

Potential Environmental Impacts

The impact areas analyzed in the Final DU Oxide SEIS include: Site infrastructure; climate, air quality, and noise; geology and soils; water resources; biotic resources; public and occupational health and safety (during normal operations, accidents, and transportation); socioeconomics; waste management; land use and aesthetics; cultural resources; and environmental justice. DOE evaluated potential environmental impacts at a level of detail commensurate with their importance. The Final DU Oxide SEIS does not reevaluate the impacts of storage of DUF_6 cylinders, conversion of DUF_6 to DU oxide, or the management and disposition of hydrogen fluoride. These activities were evaluated in the 2004 EISs and decisions were announced in ROD 69 FR 44654 and ROD 69 FR 44649.

Potential impacts of the No Action Alternative and Action Alternative are discussed in Chapter 4 of the Final DU Oxide SEIS. Based on the analysis in the Final DU Oxide SEIS, annual impacts on site infrastructure; air quality, climate change, and noise; geology and soils; water resources; biotic resources; socioeconomics; land use and aesthetics; cultural resources; and environmental justice would be negligible to minor and similar for the No Action Alternative and Action Alternatives. Annual potential impacts to public and occupational health and safety (during normal operations and accidents) resulting from storage of DU oxide at the Portsmouth and Paducah sites would be similar for the No Action Alternative and Action Alternatives. However, under the Action Alternatives, DU oxide containers would be stored for up to 76 years at Paducah and up to 47 years at the Portsmouth site, resulting in lower total potential storage impacts than the No Action Alternative. The No Action Alternative assumed for analytical purposes that containers would be stored for 100 years.

Annual population dose from hypothetical cylinder breaches at the Paducah site was estimated to be 0.01 person-rem and at the Portsmouth site 0.002 person-rem. Thus, the No Action Alternative would result in zero latent cancer fatalities (LCF) among the exposed population, but relatively higher total exposure and calculated LCFs (6×10^{-4} LCF at Paducah and 1×10^{-4} LCF at the Portsmouth site) due to a longer storage period than that of the Action Alternatives (5×10^{-4} LCF at the Paducah site and 6×10^{-5} LCF at the Portsmouth site). Similarly, the maximally exposed individual member of the public, and a cylinder yard worker, would receive the same annual dose from storage of cylinders under the No Action or Action Alternatives, but a lower total dose from the Action Alternatives due to the reduced storage time.

Additional worker exposure would result from all Action Alternatives from the handling of the DU oxide drums and cylinders (or bulk bags and empty cylinders) and empty and heel cylinders during loading operations at the Paducah and Portsmouth sites in preparation for shipment to the waste disposal site. Worker exposure from loading containers would result in zero LCFs for all Action Alternatives and options. All potential worker and public doses would be well below regulatory limits for radiation exposure.

Waste disposal volumes would not be expected to exceed the capacities of the Energy*Solutions,* WCS, or NNSS disposal facilities. For purposes of analysis and to bound the impacts under each Action Alternative, it was assumed that all wastes would be disposed of at each disposal site (*i.e.,* Energy*Solutions,* WCS, or NNSS). In practice, waste could be disposed of at more than one disposal site.

While all three Action Alternatives would result in lower overall potential public and occupational health impacts at the Portsmouth and Paducah sites compared to the No Action Alternative, the Action Alternatives would result in increased impacts from the handling and transportation of DU oxide to each disposal location. The Final DU Oxide SEIS analyzed transportation options for each Action Alternative, including transportation by truck or train and in cylinders or bulk bags. None of the Action Alternatives or shipment options resulted in an expected radiologic fatality (*i.e.,* a calculated LCF of one or greater) among the potentially exposed population or crew. Calculated population LCFs for the Action Alternatives ranged from 0.4 population LCFs expected from truck transportation of DU oxide in cylinders to Energy*Solutions* or NNSS to 0.06 from train transportation of bulk bags to Energy*Solutions* or WCS. Calculated population LCFs were higher for the NNSS alternative because of the greater distance to the disposal site. Calculated population LCFs were higher for truck than train transportation, and higher for transportation in cylinders than in bulk bags. This is primarily due to the difference in total mileage necessary for each option and the potentially exposed populations along truck and rail routes. Calculated crew LCFs for the Action Alternatives ranged from 0.2 crew LCFs for transportation to NNSS in cylinders via truck, to 0.04 crew LCFs for transportation to WCS in bulk bags via train. Calculated crew LCFs were higher for NNSS than for the other Action Alternatives because of the greater distance to the disposal site. Calculated crew LCFs were higher for truck than train transportation, and higher for transportation in cylinders than in bulk bags. This is primarily due to the difference in total mileage necessary for each option and the potentially exposed crew along truck and rail routes.

All the Action Alternatives could result in non-radiologic fatalities as a result of traffic accidents, ranging from one expected traffic fatality for train transportation of bulk bags to any of the disposal sites to 11 traffic fatalities for truck transport of cylinders to Energy*Solutions* or NNSS. Calculated traffic fatalities were similar across the Action Alternatives for a given transportation mode and container option. Calculated traffic fatalities were higher for truck transportation than train, and higher for transportation in cylinders than in bulk bags. This is primarily due to the difference in total mileage necessary for each option.

The No Action Alternative would result in lower potential LCFs from transportation to crew and the population, and lower potential traffic fatalities because it would not result in the transportation of DU oxide to a disposal site during the period of analysis. However, because the No Action Alternative defers a disposition decision, it is likely that at some future

time the containers of DU oxide may be transported off site for disposal or some undetermined future use. The impacts of transportation and disposal of DU oxide would likely be similar to the potential impacts described for the Action Alternatives.

Environmentally Preferable Alternative

The No Action Alternative would be the Environmentally Preferable Alternative. Under the No Action Alternative, transportation and disposal would not occur, and the DU oxide containers would remain in storage at the Paducah and Portsmouth sites, resulting in less impacts from container handling and transportation than under the Action Alternatives. However, the No Action Alternative defers a disposition decision for the DU oxide containers. Because the No Action Alternative defers a disposition decision, it is likely that at some future time the containers of DU oxide would be transported off-site for disposal or some undetermined future use. The impacts of transportation and disposal of DU oxide would likely be similar to the potential impacts described for the Action Alternatives.

Comments Received on Draft DU Oxide SEIS

DOE received 24 comment documents which contained 115 comments. All comments were considered in preparing the Final DU Oxide SEIS. DOE did not receive any comments after the close of the comment period. Topics of comments received during the public comment period on the Draft DU Oxide SEIS are presented in Appendix E, of the Final DU Oxide SEIS. DOE has considered comments received on the Draft DU Oxide SEIS and finds that they do not present ''significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts'' within the meaning of 40 CFR 1502.9(c) and 10 CFR 1021.314(a) and therefore do not require preparation of a supplement analysis or a supplemental EIS.

Decision

DOE has decided to implement its Preferred Alternative as described in the Final DU Oxide SEIS. DOE's Preferred Alternative is to dispose of DU oxide, if a beneficial use cannot be found, at one or more of the disposal sites: (1) The Energy*Solutions* LLW disposal facility near Clive, Utah; (2) the WCS LLW disposal facility near Andrews, Texas; and (3) the NNSS LLW disposal facility in Nye County, Nevada. DOE will only ship to the selected commercial site(s) if the facility is authorized to receive DU oxide. In making its decision, DOE considered several factors especially the potential environmental impacts of the No Action Alternative and the Action Alternatives; each alternative's ability to meet DOE's purpose and need; direct, indirect, and cumulative impacts of each alternative; and public comments on the Final DU Oxide SEIS. Based on the analysis in the Final DU Oxide SEIS, all disposal locations identified and analyzed are suitable for transportation and disposal of DU oxide, if a beneficial use cannot be found. Impacts to human health and the human environment would be similar for all three sites. The No Action Alternative would not meet the purpose and need for agency action and would only defer a final decision on the ultimate disposition of the DU oxide. In addition, under the No Action Alternative, it is likely that at some future time the containers of DU oxide would be transported off-site for disposal or some undetermined future use, if a use is identified. DOE acknowledges additional commercial DUF_6 was analyzed in the DU Oxide SEIS as a reasonably foreseeable future action contributing to cumulative impacts, which is not part of this decision.

Mitigation

The Proposed Action would include all practical means to avoid or minimize environmental harm, including following standard practices such as Best Management Practices for minimizing impacts on environmental resources. The alternatives evaluated are not expected to produce impacts that would require mitigation. Therefore, a Mitigation Action Plan is not required.

Signing Authority

This document of the Department of Energy (DOE) was signed on June 1, 2020, by William I. White, Senior Advisor for Environmental Management to the Under Secretary for Science, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 2, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–12185 Filed 6–4–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–40–000]

Spire STL Pipeline, LLC; Notice of Request for Extension of Time

Take notice that on May 27, 2020, Spire STL Pipeline, LLC (Spire) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until August 3, 2021, to construct and place into service a section of 24-inch diameter pipeline to the Enable Mississippi Transmission, LLC (MRT) interconnect which is part of the original certificate authorization issued on August 3, 2018 (Certificate Order). The Certificate Order required Spire to construct and place the facilities in service by August 3, 2020.

In November 2019, Spire requested and the Commission authorized Spire to place most of the project facilities into service including the Mainline, North County Extension, Rex Receipt Station and the Laclede/Lange and Chain of Rocks Delivery Stations. At that time, Spire explained that with respect to the section of 24-inch-diameter pipeline to the MRT interconnect, that it would construct this remaining section of pipeline in the spring of 2020. Spire states that it does not anticipate completing construction of the MRT interconnect due to COVID–19 pandemic related construction delays. In order to allow enough time for the safe completion of construction and to account for uncertainty regarding future COVID related restrictions, Spire requests an extension of time until August 3, 2021 to complete construction of this final section of pipeline.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Spire's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and

Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).[1]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[2] the Commission will aim to issue an order acting on the request within 45 days.[3] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[4] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[5] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[6] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on June 16, 2020.

Dated: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12235 Filed 6–4–20; 8:45 am]

BILLING CODE 6717–01–P

[1] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 39 (2020).

[2] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[3] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

[4] *Id.* at P 40.

[5] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[6] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2629–014]

Village or Morrisville, Vermont; Notice of Petition for Declaratory Order

Take notice that on May 28, 2020, the Village of Morrisville (Morrisville), applicant for relicensing the Morrisville Hydroelectric Project No. 2629, filed a petition for declaratory order (petition) pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2). Morrisville requests that the Commission declare that the Vermont Agency of Natural Resources has waived its authority to issue a certification for the Morrisville Hydroelectric Project under Section 401 of the Clean Water Act, 33 U.S.C. 1341(a)(1), as more fully explained in the petition.

Any person wishing to comment on Morrisville's petition may do so.[1] The deadline for filing comments is 30 days from the issuance of this notice. The Commission encourages electronic submission of comments in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should send comments to the following address: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Be sure to reference the project docket number (P–2629–014) with your submission.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission' s Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 1, 2020.

Dated: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12219 Filed 6–4–20; 8:45 am]

BILLING CODE 6717–01–P

[1] Morrisville's request is part of its relicensing proceeding in Project No. 2629–014. Thus, any person that intervened in the relicensing proceeding is already a party. The filing of the petition in this case does not trigger a new opportunity to intervene.

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: EC20–67–000.

Applicants: Broadview Energy JN, LLC, Broadview Energy KW, LLC.

Description: Supplement to May 15, 2020 Application for Authorization Under Section 203 of the Federal Power Act, et al. of Broadview Energy JN, LLC, et al.

Filed Date: 5/29/20.

Accession Number: 20200529–5510.

Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: EC20–69–000.

Applicants: Northern States Power Company, a Minnesota corporation, FPL Energy Mower County, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Northern States Power Company, a Minnesota corporation, et al.

Filed Date: 5/29/20.

Accession Number: 20200529–5521.

Comments Due: 5 p.m. ET 6/19/20.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–173–000.

Applicants: Little Bear Solar 1, LLC.

Description: Updated Notice of Self-Certification of Exempt Wholesale

Generator Status of Little Bear Solar 1, LLC.
Filed Date: 5/29/20.
Accession Number: 20200529–5323.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: EG20–174–000.
Applicants: Calpine Northeast Development, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 5/29/20.
Accession Number: 20200529–5402.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: EG20–175–000.
Applicants: Cerro Gordo Wind, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Cerro Gordo Wind, LLC.
Filed Date: 5/29/20.
Accession Number: 20200529–5405.
Comments Due: 5 p.m. ET 6/19/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1852–038.
Applicants: Florida Power & Light Company.
Description: Notification of Change in Status of Florida Power & Light Company.
Filed Date: 6/1/20.
Accession Number: 20200601–5150.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER10–2475–021; ER10–2474–021; ER10–2605–014; ER10–2611–021; ER10–2984–046; ER10–3246–015; ER11–2044–033; ER11–3876–024; ER12–162–028; ER12–1626–011; ER13–1266–029; ER13–1267–010; ER13–1268–010; ER13–1269–010; ER13–1270–010; ER13–1271–010; ER13–1272–010; ER13–1273–010; ER13–1441–010; ER13–1442–010; ER13–520–010; ER13–521–010; ER15–2211–026; ER16–1258–003; ER16–438–005; ER18–1419–002.
Applicants: Nevada Power Company, Sierra Pacific Power Company, PacifiCorp, Pinyon Pines Wind I, LLC, Pinyon Pines Wind II, LLC, Solar Star California XIX, LLC, Solar Star California XX, LLC, Topaz Solar Farms LLC, CE Leathers Company, Elmore Company, Del Ranch Company, Fish Lake Power LLC, Salton Sea Power Generation Company, Vulcan/BN Geothermal Power Company, Yuma Cogeneration Associates, Bishop Hill Energy II LLC, MidAmerican Energy Company, Cordova Energy Company LLC, Walnut Ridge Wind, LLC, Grande Prairie Wind, LLC, Marshall Wind Energy LLC, Saranac Power Partners, L.P., CalEnergy, LLC, MidAmerican Energy Services, LLC, Merrill Lynch Commodities, Inc., Salton Sea Power L.L.C.
Description: Notice of Non-Material Change in Status of the BHE MBR Sellers and Merrill Lynch Commodities, Inc.
Filed Date: 5/29/20.
Accession Number: 20200529–5534.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER10–2756–009.
Applicants: Griffith Energy LLC.
Description: Notice of Non-Material Change in Status of Griffith Energy LLC.
Filed Date: 5/29/20.
Accession Number: 20200529–5512.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER17–996–003.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: Compliance to exclude State Program language as directed by FERC 5/12/20 Order to be effective 5/12/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5508.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER18–680–003.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance filing per Commission's 3/31/2020 Order in Docket No. ER18–680 to be effective 1/1/2018.
Filed Date: 6/1/20.
Accession Number: 20200601–5075.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1926–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–05–29_TOA Amendment Advisory Committee Affiliate Sector to be effective 7/29/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5252.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1927–000.
Applicants: Midcontinent Independent System Operator, Inc., Consumers Energy Company.
Description: Compliance filing: 2020–05–29_Consumers' Compliance on Order 864 for ADIT to be effective 1/27/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5257.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1928–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–05–29_Attachment FF True-up Filing to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5259.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1929–000.
Applicants: Baltimore Gas and Electric Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: BGE submits Revisions to PJM Tariff, Att. H–2A re: Stated Depreciation Rates to be effective 8/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5267.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1930–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Certificate of Concurrence for Amended and Restated Service Agreement No. 854 to be effective 5/30/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5275.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1931–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: May 2020 Western Interconnection Agreement Biannual Filing to be effective 8/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5280.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1932–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: May 2020 Western WDT Service Agreement Biannual Filing to be effective 8/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5285.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1933–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Second Revised ISA, SA No. 4608; Queue No. AE2–155 to be effective 4/30/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5305.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1934–000.
Applicants: Entergy Nuclear Indian Point 2, LLC.
Description: Tariff Cancellation: Entergy Nuclear Indian Point 2, LLC to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5504.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1935–000.
Applicants: Tampa Electric Company.
Description: § 205(d) Rate Filing: Section 205 Solar Intangible Depreciation Filing—2020 to be effective 1/1/2019.
Filed Date: 5/29/20.
Accession Number: 20200529–5329.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1936–000.
Applicants: Walnut Ridge Wind, LLC.
Description: § 205(d) Rate Filing: Reactive Power Compensation Tariff Filing to be effective 6/1/2020.

Filed Date: 5/29/20.
Accession Number: 20200529–5354.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1937–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2020–05–29 EIM Implementation Agreement with Public Service Co—Colorado to be effective 7/31/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5435.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1938–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: LGIA Luz Solar Partners LTD., VIII, Kramer Junction 8 SA No. 247 to be effective 5/30/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5446.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1939–000.
Applicants: Calpine Northeast Development, LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization under Section 205 of the FPA to be effective 5/30/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5454.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1940–000.
Applicants: Agera Energy LLC.
Description: Tariff Cancellation: Tariff Cancellation to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5474.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1941–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3687 GridLiance High Plains & Evergy Kansas Central Int Agr to be effective 8/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5488.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1942–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2020–05–29_Conventional Deliverable ICAP Filing to be effective 8/12/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5493.
Comments Due: 5 p.m. ET 6/19/20.

Docket Numbers: ER20–1943–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: June 2020 Membership Filing to be effective 5/1/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5006.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1944–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Attachment S (MPCo) 2020 Updated Depreciation Rates Filing to be effective 4/1/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5062.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1945–000.
Applicants: Duke Energy Ohio, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Duke Energy Ohio submits IA SA No. 5186 to be effective 7/31/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5064.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1946–000.
Applicants: Beech Ridge Energy II LLC.
Description: § 205(d) Rate Filing: Amendment to Beech Ridge Energy II MBR Tariff to be effective 6/2/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5085.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1947–000.
Applicants: Greenleaf Energy Unit 2 LLC.
Description: Baseline eTariff Filing: Rate Schedules and Agreements baseleine to be effective 6/2/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5129.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1948–000.
Applicants: Potomac-Appalachian Highline Transmission, PJM Interconnection, L.L.C.
Description: Compliance filing: PATH submits Compliance Filing re: Order 864 to be effective 1/27/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5131.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1949–000.
Applicants: Georgia Power Company.
Description: § 205(d) Rate Filing: JEA Scherer Unit 4 TSA 2020 GPCo Updated Depreciation Rate and Errata Filing to be effective 1/1/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5140.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1950–000.
Applicants: Georgia Power Company.
Description: § 205(d) Rate Filing: FP&L Scherer Unit 4 TSA 2020 GPCo Updated Depreciation Rate and Errata Filing to be effective 1/1/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5142.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1951–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.
Description: Compliance filing: MAIT submits Compliance Filing re: Order 864 to be effective 1/27/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5141.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1952–000.
Applicants: North Star Solar PV LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 7/31/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5148.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1953–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX–LCRA TSC Heines Facility Development Agreement to be effective 5/20/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5157.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1954–000.
Applicants: ITC Great Plains, LLC, Southwest Power Pool, Inc.
Description: Compliance filing: ITC Great Plains, LLC Order No. 864 Compliance Filing to be effective 1/27/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5160.
Comments Due: 5 p.m. ET 6/22/20.

Docket Numbers: ER20–1955–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: PNM Compliance with Order No. 864 to be effective 1/27/2020.
Filed Date: 6/1/20.
Accession Number: 20200601–5172.
Comments Due: 5 p.m. ET 6/22/20.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR20–3–000.
Applicants: North American Electric Reliability Corp.
Description: North American Electric Reliability Corporation's Report of Comparison of Budgeted to Actual Costs for 2019 for NERC and the Regional Entities.
Filed Date: 5/29/20.
Accession Number: 20200529–5528.
Comments Due: 5 p.m. ET 6/19/20.

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: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12230 Filed 6–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10721–033]

Big Creek Lodge & Outfitters Inc.; Idaho Aviation Foundation; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On April 28, 2020, J Curtis Earl Idaho Aviation Foundation Inc., dba Idaho Aviation Foundation (transferee) filed an application for an after-the-fact transfer of license of the Big Creek Hydroelectric Project No. 10721. The project is located on McCorkle Creek, in Valley County, Idaho, and within the Payette National Forest.

The applicant seeks Commission approval to transfer the license for the Big Creek Hydroelectric Project from Big Creek Lodge & Outfitters Inc. (transferor) to the transferee. The Big Creek Lodge tragically burned to the ground in October 2008 and Idaho Aviation Foundation purchased the assets of Big Creek Lodge & Outfitters Inc. including the hydropower project.

Applicant's Contacts: Vic Jaro, Idaho Aviation Foundation, Board Member, 1297 Quail Hollow, Buhl, ID 83316, Phone: (208) 404–9627; Email: *info@idahoaviationfoundation.org* and Nadine Burak, Secretary/Treasurer, P.O. Box 2016, Eagle, ID 83616.

FERC Contact: Anumzziatta Purchiaroni, (202) 502–6191, *anumzziatta.purchiaroni@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–10721–033.

Dated: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12233 Filed 6–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–1939–000]

Calpine Northeast Development, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Calpine Northeast Development, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is June 22, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12232 Filed 6–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2153–066]

United Water Conservation District; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Amend license to replace outlet works and modify spillway.

b. *Project No.:* 2153–066.

c. *Date Filed:* May 26, 2020.

d. *Applicants:* United Water Conservation District.

e. *Name of Projects:* Santa Felicia.

f. *Location:* Piru Creek, Ventura County, California.

g. *Filed Pursuant to:* 18 CFR 6.1.

h. *Applicant Contact:* Maryam Bral, United Water Conservation District, 1701 North Lombard St., Suite 200, Oxnard, CA 93030, (804) 325–6563.

i. *FERC Contact:* David Rudisail, (202) 502–6376, *david.rudisail@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Please include the project number (P–2153–066) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* United Water Conservation District proposes to implement the two components of the Santa Felicia Dam Safety Improvement Project: (1) Replace the existing outlet works of Santa Felicia Dam with a new intake facility, conduit and tunnel, and downstream control facility; and (2) modify the existing spillway to increase the Inflow Design Flood capacity.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE, as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license proposed re-development. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12224 Filed 6–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–50–000]

ALLETE, Inc. and ALLETE South Wind, LLC; Notice of Petition for Declaratory Order

Take notice that on May 29, 2020, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, ALLETE, Inc. and ALLETE South Wind, LLC (Petitioners), filed a petition for a declaratory order seeking guidance concerning the scope of the affiliate relationship the Commission will impute between the Petitioners and Nobles 2 Power Partners, LLC, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 29, 2020.

Dated: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12222 Filed 6–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–220–000]

National Fuel Gas Supply Corporation; Notice of Request for Extension of Time

Take notice that on May 20, 2020, National Fuel Gas Supply Corporation (National) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until November 1, 2020, to construct and place into service Brockway Modernization Project (Project) located in Jefferson and Elk Counties, Pennsylvania authorized on July 3, 2019. The Project will enable replacement of approximately 9.7 miles of 12-inch-diameter pipeline and certain related facilities.

National was initially required to construct the facilities and place them into service by July 5, 2020. National now requests a four-month extension of this deadline through November 1, 2020. National states that due to delays in receiving the required permits, National was unable to begin construction until March 1, 2020. Accordingly, National proposes a new construction schedule, deferring the projected in-service date for the facilities to no later than November 1, 2020.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on National's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).[1]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[2] the Commission will aim to issue an order acting on the request within 45 days.[3] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[4] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[5] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[6] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on June 12, 2020.

Dated: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12234 Filed 6–4–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–218–000]

Equitrans, L.P.; Notice of Request for Extension of Time

Take notice that on May 22, 2020, Equitrans, L.P. (Equitrans) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until March 31, 2021, to construct and place into service its TP–4555 Bare Pipe Replacement Project (Project) located in Westmoreland County, Pennsylvania. authorized on July 3, 2019. The Project will enable abandonment of approximately 3.85 miles of 20-inch-diameter pipeline on the TP–4555 pipeline, replacing it with a newly constructed approximately 3.92 miles of 20-inch-diameter pipeline.

Equitrans was initially required to construct the facilities and place them into service by July 3, 2020. Equitrans now requests a nine-month extension of this deadline through March 31, 2021. Equitrans states that due to delays in receiving the required Pennsylvania Department of Environmental Protection permits, Equitrans was unable to begin construction until May 12, 2020. Accordingly, Equitrans proposes a new construction schedule, deferring the projected in-service date for the facilities to no later than March 31, 2021.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Equitrans request may do so. No reply comments or answers will be considered If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)

[1] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 39 (2020).

[2] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[3] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

[4] *Id.* at P 40.

[5] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[6] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

and the Regulations under the Natural Gas Act (18 CFR 157.10). [1]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[2] the Commission will aim to issue an order acting on the request within 45 days.[3] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[4] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[5] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[6] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on June 16, 2020.

Dated: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12231 Filed 6–4–20; 8:45 am]

BILLING CODE 6717–01–P

[1] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 39 (2020).

[2] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[3] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

[4] *Id.* at P 40.

[5] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[6] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–49–000]

Shell Energy North America (U.S.), LP; Notice of Petition for Declaratory Order

Take notice that on May 29, 2020, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, Shell Energy North America (U.S.), L.P. (Petitioner), filed a petition for a declaratory order requesting that the Commission interpret the PJM Interconnection, L.L.C. Tariff provisions regarding bilateral transfers of Financial Transmission Rights and to resolve an ongoing dispute currently pending in Texas state court, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on June 29, 2020.

Dated: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12220 Filed 6–4–20; 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 Number: PR20–64–000.

Applicants: Southern California Gas Company.

Description: Tariff filing per 284.123(b), (e) + (g): Offshore_Delivery_Service_Rate_Revision_May_2020 to be effective 5/1/2020.

Filed Date: 5/28/2020.

Accession Number: 202005285311.

Comments Due: 5 p.m. ET 6/18/2020.

284.123(g) Protests Due: 5 p.m. ET 7/27/2020.

Docket Numbers: RP20–898–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—NJR 911065, 911121, 911158, 910530 to be effective 6/1/2020.

Filed Date: 5/29/20.

Accession Number: 20200529–5038.

Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–899–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedule S–2 Tracker Filing (ASA) eff 6/1/2020 to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5039.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–900–000.
Applicants: MoGas Pipeline LLC.
Description: § 4(d) Rate Filing: MoGas Negotiated Rate Agreement Filing to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5063.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–901–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: PCB Adjustment Period Extension through 2022 to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5078.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–902–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (APS June 2020) to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5125.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–903–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer Jul–Sept 2020) to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5127.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–904–000.
Applicants: Eastern Shore Natural Gas Company.
Description: § 4(d) Rate Filing: Fuel Retention and Cash-Out Adjustment 2020 to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5141.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–905–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2020 June Negotiated Rate Amendments to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5164.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–906–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Compliance filing Compliance to RP20–78–000 LNG Settlement to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5175.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–907–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2020 Cymric Meter Station to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5177.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–908–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) Rate Filing: APL Section 4 Rate Case to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5210.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–909–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2020–05–29 Negotiated Rate Agreement to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5212.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–910–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Interim Fuel Tracker Filing to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5217.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–911–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2020–05–29 Non-Conforming Negotiated Rate Amendment to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5224.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–912–000.
Applicants: Texas Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Additional Clarifications and Clean-up Items Pending GMS to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5234.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–913–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Additional Clarifications and Cleanup Items related to New GasQuest System to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5256.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–914–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (BP 46441 eff 6–1–2020) to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5262.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–915–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Amendment to NC Neg Rate Agmt (Panda Sherman 624) to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5265.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–916–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta Gas 8438 releases eff 6–1–2020) to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5266.
Comments Due: 5 p.m. ET 6/10/20.
Docket Numbers: RP20–917–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20200529 Negotiated Rates to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5270.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–918–000.
Applicants: Devon Gas Services, L.P., BKV Barnett, LLC.
Description: Joint Petition for Temporary Waiver of Capacity Release Regulations, et al. of Devon Gas Services, L.P., et al. under RP20–918.
Filed Date: 5/29/20.
Accession Number: 20200529–5272.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–919–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Non-Conforming Agreements Filing (Sempra_SRP) to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5300.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–920–000.
Applicants: Discovery Gas Transmission LLC.
Description: § 4(d) Rate Filing: Discovery Gas Transmission LLC's 2019 Fuel, Lost and Unaccounted for Gas to be effective 7/1/2020.

Filed Date: 5/29/20.
Accession Number: 20200529–5301.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–921–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Maritimes & Northeast Pipeline, L.L.C. 2020 Section 4 Rate Case Filing to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5374.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–922–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Compliance filing Incremental Rate Schedule: CP18–548 Del-Mar Energy Pathway to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5414.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–923–000.
Applicants: Eastern Shore Natural Gas Company.
Description: Compliance filing Non-Conforming and Negotiated Rates—Del-Mar Energy Pathway Project to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5425.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–924–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: § 4(d) Rate Filing: Quarterly Fuel Adjustment Filing to be effective 7/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5460.
Comments Due: 5 p.m. ET 6/10/20.

Docket Numbers: RP20–925–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TIGT 2020–05–29 Negotiated Rate Agreement to be effective 6/1/2020.
Filed Date: 5/29/20.
Accession Number: 20200529–5485.
Comments Due: 5 p.m. ET 6/10/20.

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: June 1, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–12221 Filed 6–4–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–10009–98]

Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 and Table 2 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a February 4, 2020 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II to voluntarily cancel and amend to terminate uses of these product registrations. In the February 4, 2020 notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency had intended to publish this new version instead of the previous version which published by mistake on May 4, 2020; therefore, this Cancellation Order replaces the previous notice. The Agency received one comment on the notice. As a result, product 3573–73 is not included in this cancellation order. See Unit III for further information. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations and amendments are effective June 5, 2020.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

II. What action is the Agency taking?

This notice announces the cancellations and amendments to terminate uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 and Table 2 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
464–8123	464	Filmguard IPBC 100 Fungicidal Agent (Active), Bioban IPBC 100 Antimicrobial (Alternate).	Carbamic acid, butyl-, 3-iodo-2-propynyl ester.
464–8125	464	Filmguard IPBC 20 Fungicidal Agent (Active), Bioban IPBC 20 Antimicrobial and Bioban IPBC 20 LE (Alternate).	Carbamic acid, butyl-, 3-iodo-2-propynyl ester.
499–322	499	Whitmire Avert PT 300 Pressurized Spray	Abamectin.
499–383	499	Whitmire Avert PT 310 HO Abamectin Bait Dust.	Abamectin.
499–394	499	Whitmire Avert Prescription Treatment 320 Crack & Crevice Gel Bait.	Abamectin.
499–406	499	Avert Prescription Treatment TC 93A Bait	Abamectin.
499–410	499	Avert Prescription Treatment TC 93B Bait	Abamectin.
499–434	499	Whitmire TC 149A Insecticide	Abamectin.
499–440	499	Whitmire TC 149B	Abamectin.
499–467	499	Whitmire Avert TC 181	Abamectin.
1448–100	1448	Busan 1069	2-(Thiocyanomethylthio)benzothiazole.
1448–341	1448	Busan 1127	2-(Thiocyanomethylthio)benzothiazole.
4959–34	4959	YYY Disinfectant	Iodine.
5185–498	5185	Bioguard Crystal Blue Mineral Cartridge	Silver nitrate.
7364–60	7364	Spa/Hot Tub Products Chlorinating Concentration Granular.	Sodium dichloro-s-triazinetrione.
7969–189	7969	Baseline Plant Regulator	Prohexadione calcium.
8378–54	8378	Gro-Fine Bayleton Fungicide	Triadimefon.
8378–55	8378	Shaw's Fungicide 100	Triadimefon.
9198–187	9198	Andersons Golf Products Fungicide VII	Triadimefon.
9198–190	9198	Andersons Golf Products Fertilizer Plus Fungicide VII.	Triadimefon.
9386–7	9386	AMA–31	Nabam & Sodium dimethyldithiocarbamate.
9386–11	9386	AMA–30	Nabam & Sodium dimethyldithiocarbamate.
9386–23	9386	AMA–9	Nabam & Sodium dimethyldithiocarbamate.
10324–18	10324	Algaesil	Nanosilver 002.
10324–165	10324	Maquat MC1416–90%	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12).
33677–1	33677	Tolcide(R) MBT	Methylene bis(thiocyanate).
34688–76	34688	Aquatreat DNM–30	Nabam & Sodium dimethyldithiocarbamate.
34688–77	34688	Aquatreat KM	Potassium dimethyldithiocarbamate.
34688–78	34688	Aquatreat SDM	Sodium dimethyldithiocarbamate.
34688–79	34688	Aquatreat DN–30	Nabam.
34704–882	34704	Oryzalin T&O	Oryzalin.
34704–918	34704	Ethofume SC Herbicide	Ethofumesate.
34704–949	34704	Intensity Max	Clethodim.
35917–2	35917	Iodinated Resin H–465	Iodine.
45309–12	45309	Spa Clear Spa Chlor-56	Sodium dichloro-s-triazinetrione.
45309–21	45309	Aqua Clear Iso-Gran	Sodium dichloro-s-triazinetrione.
45309–59	45309	Aqua Clear Aqua-Shock	Sodium dichloro-s-triazinetrione.
45309–61	45309	Aqua Clear Winterizer	Sodium dichloro-s-triazinetrione.
45309–84	45309	Red Plug Cartridge with Concentrated Chlorinated Tablets.	Trichloro-s-triazinetrione.
45309–94	45309	Speed-Y-Tabs	Sodium dichloroisocyanurate dihydrate.
62719–694	62719	MON 89034 X TC1507 X MIR162	Bacillus thuringiensis Vip3Aa20 protein encoded by vector pNOV1300 in event MIR162 corn (SYN–IR162–4), % dw; Bacillus thuringiensis Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn; Bacillus thuringiensis Cry2Ab2 protein and the genetic material necessary (vector PV–ZMIR245) for its production in corn & Bacillus thuringiensis Cry1A.105 protein and genetic material necessary (vector PV–ZMIR245) for its production in corn.
67262–18	67262	3'' Stabilized Chlorinator Tablets	Trichloro-s-triazinetrione.
70506–50	70506	Surflan 85DF	Oryzalin.
70506–51	70506	Turf Fertilizer Contains Surflan 1%	Oryzalin.
70506–52	70506	Turf Fertilizer Contains Surflan 0.75%	Oryzalin.
70506–53	70506	Up-Shot DF Herbicide	Oryzalin & Isoxaben.
70506–54	70506	Surflan 75W	Oryzalin.
70506–55	70506	Turf Fertilizer Contains Galley Plus Surflan	Oryzalin & Isoxaben.
70506–96	70506	Oryza Ag	Oryzalin.
70506–97	70506	Oryza T&O	Oryzalin.
72616–9	72616	Taratek TC	Triadimefon & Cyproconazole.
85678–55	85678	Flucarbazone 35% SC	Flucarbazone-sodium.
87262–4	87262	Compass THPS	Tetrakis(hydroxymethyl)phosphonium sulphate (THPS).
87262–6	87262	Compass THPS 50	Tetrakis(hydroxymethyl)phosphonium sulphate (THPS).

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredients
87262–7	87262	Compass THPS 35	Tetrakis(hydroxymethyl)phosphonium sulphate (THPS).
87262–8	87262	Compass THPS 20	Tetrakis(hydroxymethyl)phosphonium sulphate (THPS).
88276–1	88276	Octopol DSM–30	Nabam & Sodium dimethyldithiocarbamate.
89442–2	89442	Ethofumesate Select	Ethofumesate.
91813–24	91813	Agvalue Oryzalin Technical	Oryzalin.
AL–870002	400	Dimilin 25W for Cotton/Soybean	Diflubenzuron.
CA–100013	63206	Lorsban Advanced	Chlorpyrifos.
CA–790138	5481	Orthene 75 S Soluble Powder	Acephate.
CA–950010	5481	Fruit Fix Concentrate 200	Ammonium 1-naphthaleneacetate.
CO–070003	71512	Omega 500F	Fluazinam.
CO–080008	62719	Lorsban Advanced	Chlorpyrifos.
CO–090005	71512	Beleaf 50SG Insecticide	Flonicamid.
CO–140002	1381	Carnivore Herbicide	MCPA, 2-ethylhexyl ester; Bromoxynil octanoate & Fluroxypyr-meptyl.
HI–090001	62719	Lorsban Advanced	Chlorpyrifos.
WA–000035	352	Curzate 60DF	Cymoxanil.
WA–020019	62719	NAF–522	Glyphosate-isopropylammonium.

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
45728–7	45728	Ferbam Granuflo	Ferbam	Grapes and cherries.
45728–14	45728	Thionic Ziram Technical	Ziram	Industrial yarns and fabrics.

Table 3 of this unit includes the names and addresses of record for all the registrants of the products listed in Tables 1 and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS OF CANCELLED AND AMENDED PRODUCTS

EPA company No.	Company name and address
352	E. I. Du Pont De Nemours and Company, 9330 Zionsville Road, Indianapolis, IN 46268.
400	MacDermid Agricultural Solutions, Inc., C/O Arysta LifeScience North America, LLC, Agent Name: UPL NA, Inc., 630 Freedom Business Center, #402, King of Prussia, PA 19406.
464	DDP Specialty Electronic Materials US, Inc., A Wholly Owned Subsidiary of The Dow Chemical Company, 1501 Larkin Center Drive, Midland, MI 48674.
499	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
1381	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
1448	Buckman Laboratories, Inc., 1256 North Mclean Blvd., Memphis, TN 38108.
4959	West Agro, Inc., 11100 N Congress Ave., Kansas City, MO 64153.
5185	Bio-Lab, Inc., P.O. Box 300002, Lawrenceville, GA 30049–1002.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
7364	Innovative Water Care, LLC, D/B/A GLB Pool & Spa, 1400 Bluegrass Lakes Parkway, Alpharetta, GA 30004.
7969	BASF Corporation, Agricultural Products, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
8378	Knox Fertilizer Company, Inc., Agent Name: Fred Betz Regulatory Strategies, 922 Melvin Road, Annapolis, MD 21403.
9198	The Andersons, Inc., 1947 Briarfield Blvd., P.O. Box 119, Maumee, OH 43537.
9386	Kemira Chemicals, Inc., 1000 Parkwood Circle, Suite 500, Atlanta, GA 30339.
10324	Mason Chemical Company, 9075 Centre Pointe Dr., Suite 400, West Chester, OH 45069.
33677	Solvay Solutions UK Limited, Agent Name: Delta Analytical Corporation, 12510 Prosperity Drive, Suite 160, Silver Spring, MD 20904.
34688	Akzo Nobel Surface Chemistry, LLC, 525 W Van Buren St., Chicago, IL 60607–3823.
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
35917	Hybrid Technologies Corporation, Agent Name: RegWest Company, LLC, 8209 West 20th Street, Suite B, Greeley, CO 80634–4699.
45309	Aqua Clear Industries, LLC, P.O. Box 2456, Suwanee, GA 30024–0980.
45728	Taminco US, LLC, A Subsidiary of Eastman Chemical Company, 200 S Wilcox Dr., Kingsport, TN 37660–5147.
62719	Dow Agrosciences, LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
63206	California Citrus Quality Council, 853 Lincoln Way, Suite 206, Auburn, CA 95603.
67262	Recreational Water Products, Inc., D/B/A Recreational Water Products, P.O. Box 1449, Buford, GA 30515–1449.
70506	UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
71512	ISK BioSciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077.
72616	Lonza NZ Limited, Agent Name: Arch Wood Protection, Inc., 3941 Bonsal Road, Conley, GA 30288.
85678	RedEagle International, LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, Hockessin, DE 19707.
87262	Italmatch USA Corporation, 5544 Oakdale Road SE, Smyrna, GA 30082.

TABLE 3—REGISTRANTS OF CANCELLED AND AMENDED PRODUCTS—Continued

EPA company No.	Company name and address
88276	Tiarco Chemical Company, 1300 Tiarco Drive S.W., Dalton, GA 30720.
89442	Prime Source, LLC, Agent Name: Wagner Regulatory Associates, Inc., P.O. Box 640, 7217 Lancaster Pike, Suite A, Hockessin, DE 19707.
91813	UPL Delaware, Inc., 630 Freedom Business Ctr., # 402, King of Prussia, PA 19406.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received one comment in response to the February 4, 2020 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations and amendments to terminate uses of products listed in Tables 1 and 2 of Unit II, on product 3573–73. EPA is holding this registration for further review of the comment, and the Agency has removed product 3573–73 from this cancellation order.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations and amendments to terminate uses of the registrations identified in Tables 1 and 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1 and 2 of Unit II are canceled and amended to terminate the affected uses. The effective date of the cancellations and amendments listed in Table 1 and Table 2 that are subject of this notice is June 5, 2020. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of February 4, 2020 (85 FR 6169) (FRL–10004–10). The comment period closed on March 5, 2020.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

A. For Products 464–8123, 10324–18 & 10324–165

For products 464–8123, 10324–18 & 10324–165, listed in Table 1 of Unit II, the registrants have requested 18-months to sell existing stocks. Registrants will be permitted to sell and distribute existing stocks of these products for 18-months after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing these products, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

B. For Products 87262–4, 87262–6, 87262–7 & 87262–8

For products 87262–4, 87262–6, 87262–7 & 87262–8, listed in Table 1 of Unit II, the registrant has requested to sell existing stocks until December 31, 2020. Registrants will be permitted to sell and distribute existing stocks of these products until December 31, 2020. Thereafter, registrants will be prohibited from selling or distributing these products, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

For all other voluntary product cancellations, identified in Table 1 of Unit II, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing all other products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Now that EPA has approved product labels reflecting the requested amendment to terminate uses, registrants are permitted to sell or distribute products listed in Table 2 of Unit II under the previously approved labeling until December 6, 2021, a period of 18 months after publication of the cancellation order in this **Federal Register**, unless other restrictions have been imposed.

Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated use identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

(Authority: 7 U.S.C. 136 *et seq.*)

Dated: May 27, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–12144 Filed 6–4–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9051–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed May 22, 2020, 11:59 p.m. EST

Through June 1, 2020, 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Section 309(a) of the Clean Air Act requires that EPA make public its

comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*.

EIS No. 20200112, Draft, USACE, FL, Miami-Dade Back Bay Coastal Storm Risk Management Draft Integrated Feasibility Report and Programmatic Environmental Impact Statement, Comment Period Ends: 07/20/2020, Contact: Justine Woodward 757–201–7728.

EIS No. 20200114, Final, NOAA, WI, Wisconsin Shipwreck Coast National Marine Sanctuary, Designation, Review Period Ends: 07/06/2020, Contact: Russ Green 989–766–3359.

EIS No. 20200115, Final Supplement, USN, GU, Mariana Islands Training and Testing, Review Period Ends: 07/06/2020, Contact: Nora Macariola-See 808–472–1402.

EIS No. 20200116, Draft, USFWS, REG, Management of Conflicts Associated with Double-crested Cormorants, Comment Period Ends: 07/20/2020, Contact: Eric L. Kershner 571–565–0109.

EIS No. 20200117, Draft, USFWS, REG, Regulations Governing Take of Migratory Birds, Comment Period Ends: 07/20/2020, Contact: Eric L. Kershner 571–565–0109.

EIS No. 20200118, Draft, BR, UT, Lake Powell Pipeline Project, Comment Period Ends: 09/03/2020, Contact: Rick Baxter 801–379–1078.

Dated: June 1, 2020.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2020–12206 Filed 6–4–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0879; FRL–10010–21]

Environmental Modeling Public Meeting; Notice of Virtual Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a virtual Environmental Modeling Public Meeting (EMPM) on Wednesday, August 5, 2020, with participation by phone and webcast only. This Notice announces the meeting and provides information on its theme. The EMPM provides a public forum for EPA and its stakeholders to discuss current issues related to modeling pesticide fate, transport, exposure, and ecotoxicity for pesticide risk assessments in a regulatory context.

DATES:

Meeting: This virtual meeting will be held on August 5, 2020 from 9:00 a.m. to approximately 4:30 p.m. EDT.

Requests to participate: Requests to attend the meeting must be submitted on or before July 29, 2020. Requests to present with an accompanying abstract must be submitted on or before July 3, 2020.

ADDRESSES: This is a virtual meeting. To register to attend and/or to present at this virtual meeting, please send an email to *OPP_EMPM@epa.gov.* You must register via email to receive the webcast meeting link and audio teleconference information for participation. Registrants will be added to the ''empmlist'' LYRIS list server (*https://lists.epa.gov/read/all_forums/*). Meeting updates and participation information will be distributed through ''empmlist''.

FOR FURTHER INFORMATION CONTACT: The 2020 EMPM Co-chairs, Michael Wagman and Zoe Ruge; telephone number: (703) 347–0198 or (703) 347–0111; email address: *OPP_EMPM@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide registrant or a potential pesticide registrant under the Toxic Substances Control Act (TSCA), the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Agriculture, Forestry, Fishing and Hunting NAICS code 11.
- Utilities NAICS code 22.
- Professional, Scientific and Technical NAICS code 54.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0879, is available at *http://www.regulations.gov.* It contains materials for all previous EMPMs. EPA will similarly include materials for this EMPM after the meeting.

Please note that due to the public health emergency, the Environmental Protection Agency Docket Center (EPA/DC) and Public Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. Once the EPA/DC is reopened to the public the docket will also be available in-person at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

The purpose of the EMPM if for presentation and discussion of current issues related to modeling pesticide fate, transport, and exposure for risk assessment in a regulatory context.

III. Tentative Theme for the Meeting

The 2020 EMPM will provide a forum for presentations on drinking water assessment improvements for surface water exposure. Potential topics include: New scenario development for the Pesticide in Water Calculator (PWC); new methodology for incorporating percent cropped area (PCA) into refined drinking water assessments; new methodology for incorporating percent crop treated (PCT) into refined drinking water assessments; automation tools developed for applying new methodologies; and the drinking water assessment framework.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 26, 2020.

Marietta Echeverria,

Director, Environmental Fate and Effects Division.

[FR Doc. 2020–12142 Filed 6–4–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2020–0259; FRL–10010–24–OLEM]

Proposed Information Collection Request; Comment Request; Collection of Information on Anaerobic Digestion Facilities Processing Wasted Food To Support EPA's Sustainable Materials Management Program and Sustainable Management of Food Efforts (Revision)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is planning to submit an information collection request (ICR), ''Collection of Information on Anaerobic Digestion Facilities Processing Wasted Food to Support EPA's Sustainable Materials Management Program and Sustainable Management of Food Efforts (Revision)'' (EPA ICR No. 2533.04, OMB Control No. 2050–0217) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed renewal of a previous ICR, which is currently approved through September 30, 2020. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 4, 2020.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2020–0259, online using *www.regulations.gov* (our preferred method), by email to *oira_submission@omb.eop.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Chris Carusiello, U.S. Environmental Protection Agency, Mail Code 5306P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (703) 308–8757; fax number: (703) 308–0522; email address: *Carusiello.Chris@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Sustainable Management of Food (SMF) is a systematic approach that seeks to reduce wasted food and its associated impacts over the entire lifecycle of food. The lifecycle of food includes use of natural resources, manufacturing, sales, and consumption and ends with decisions on recovery or final disposal. Diversion of food waste from landfills is a critical component of this effort. To effectively divert food waste from landfills, sufficient capacity to process the diverted materials is required, much of which is provided by anaerobic digestion facilities. Knowledge of organics recycling capacity is needed to facilitate food waste diversion.

EPA's food recovery hierarchy prioritizes potential actions to prevent and divert wasted food. According to the hierarchy, processing wasted food via anaerobic digestion is a more desirable option than landfilling or incineration because it creates more benefits for the environment, society, and the economy. Anaerobic digestion of food waste and other organic materials generates renewable energy, reduces methane emissions to the atmosphere, and provides opportunities to improve soil health through the production of soil amendments. The SMF work supports these efforts by educating state and local governments and communities about the benefits of wasted food diversion. The SMF work also builds partnerships with state agencies and other strategic partners interested in developing organics recycling capacity and provides tools to assist organizations in developing anaerobic digestion (AD) projects.

The nationwide collection of data about AD facilities processing food waste began in 2017 with a survey of all known AD facilities under the currently approved ICR. EPA published the first annual report of findings based on these data in July 2018, and second in September 2019. EPA is renewing this ICR in order to continue to monitor growth and evaluate trends in the capacity for processing of food waste and the amount of food waste being processed via AD in the United States.

Data will be collected using electronic surveys that will be distributed to respondents by email and will be available on EPA's AD website. Participation in this data collection effort is voluntary. Respondents are not required to reveal confidential business information.

Form Numbers: EPA Form 6700–03, EPA Form 6700–04, EPA Form 6700–05.

Respondents/affected entities: Project Developers, Project Owners or Plant Operators, and Livestock Farmers.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 254 (total).

Frequency of response: Annually.

Total estimated burden: 127 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $7,615 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: The overall burden has slightly decreased from the original ICR. For this renewal, some questions have been revised for clarity and some have been streamlined. There

is no change in hours from the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: May 29, 2020.

Donna Salyer,

Acting Director, Office of Resource Conservation and Recovery.

[FR Doc. 2020–12154 Filed 6–4–20; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

Farm Credit Administration Board

AGENCY: Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. Sec. 552b(e) (1)), of the forthcoming regular meeting of the Farm Credit Administration Board.

TIME AND DATE: The regular meeting of the Board will beheld June 11, 2020, from 9:00 a.m. until such time as the Board may conclude its business. *Note: Because of the COVID–19 pandemic, we will conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions below for board meeting visitors.*

Attendance: To observe the open portion of the virtual meeting, go to *FCA.gov,* select ''Newsroom,'' then ''Events.'' There you will find a description of the meeting and a link to ''Instructions for board meeting visitors.'' See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit Administration Board (703) 883–4009. TTY is (703) 883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public, and parts will be closed. If you wish to observe the open portion, follow the instructions above in the ''Attendance'' section at least 24 hours before the meeting. If you need assistance for accessibility reasons if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are as follows:

Open Session

A. *Approval of Minutes*

- May 14, 2020

B. *Reports*

- Quarterly Report on Economic Conditions and FCS Condition and Performance
- Semi-Annual Report on Office of Examination Operations

Closed Session

- Office of Examination Quarterly Report [1]

Dated: June 1, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–12145 Filed 6–3–20; 11:15 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FRS 16805]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of establishment of a Matching Program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces the establishment of a computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the State of Wisconsin's Department of Health Services (DHS) and Department of Revenue (DOR) (''Agencies''). The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Universal Service Fund (USF) Lifeline program, which is administered by USAC under the direction of the FCC. More information about this program is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before July 6, 2020. This computer matching program will commence on July 6, 2020, unless written comments are received that require a contrary determination, and will conclude on January 5, 2022.

ADDRESSES: Send comments to Mr. Leslie F. Smith, Privacy Manager, Information Technology (IT), FCC, Washington, DC 20554, or to *Leslie.Smith@fcc.gov* or *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov* or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, and/or various Tribal-specific federal assistance programs. In a Report and Order adopted on March 31, 2016, the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program. The purpose of this particular program is to verify Lifeline eligibility by establishing that applicants or subscribers in Wisconsin are enrolled in the SNAP, SSI, or Medicaid programs, and/or through Income Verification data.

Participating Non-Federal Agencies

Wisconsin Department of Health Services (DHS) and Wisconsin Department of Revenue (DOR).

Authority for Conducting the Matching Program

47 U.S.C. 254; 47 CFR 54.400 *et seq.;* Lifeline and Link Up Reform and Modernization, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (2016 Lifeline Modernization Order).

Purpose(s)

In the 2016 Lifeline Modernization Order, the FCC required USAC to develop and operate a National Lifeline Eligibility Verifier (National Verifier) to improve efficiency and reduce waste, fraud, and abuse in the Lifeline program. The stated purpose of the National Verifier is ''to increase the integrity and improve the performance of the Lifeline program for the benefit of a variety of Lifeline participants, including Lifeline providers, subscribers, states, community-based organizations, USAC, and the

[1] Session Closed-Exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

Commission.'' 31 FCC Rcd 3962, 4006, para. 126. To help determine whether Lifeline applicants and subscribers are eligible for Lifeline benefits, the Order contemplates that a USAC-operated Lifeline Eligibility Database (LED) will communicate with information systems and databases operated by other Federal and State agencies. Id. at 4011–2, paras. 135–7.

Categories of Individuals

The categories of individuals whose information is involved in this matching program include, but are not limited to, those individuals (residing in a single household) who have applied for Lifeline benefits; are currently receiving Lifeline benefits; are individuals who enable another individual in their household to qualify for Lifeline benefits; are minors whose status qualifies a parent or guardian for Lifeline benefits; are individuals who have received Lifeline benefits; or are individuals acting on behalf of an eligible telecommunications carrier (ETC) who have enrolled individuals in the Lifeline program.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, the last four digits of the Lifeline applicant's Social Security Number, and first name and last name. The National Verifier will transfer these data elements to the Wisconsin DHS and Wisconsin DOR, which will respond either ''yes'' or ''no'' that the individual meets income verification criteria or is enrolled in a Lifeline-qualifying assistance program: State of Wisconsin's SNAP, Medicaid, and SSI.

System(s) of Records

The USAC records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline Program, a notice of which the FCC published at 82 FR 38686 (Aug. 15, 2017) and which became effective on September 14, 2017.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–12133 Filed 6–4–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0703; FRS 16808]

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 (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.

DATES: Written comments should be submitted on or before August 4, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: 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.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0703.

Title: Determining Costs of Regulated Cable Equipment and Installation, FCC Form 1205.

Form Number: FCC Form 1205.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 4,000 respondents; 6,000 responses.

Estimated Time per Response: 4–12 hours.

Frequency of Response: Recordkeeping requirement, Annual reporting requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 301(j) of the Telecommunications Act of 1996 and 623(a)(7) of the Communications Act of 1934, as amended.

Total Annual Burden: 52,000 hours.

Total Annual Cost: $1,800,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: Information derived from FCC Form 1205 filings is used to facilitate the review of equipment and installation rates. This information is then reviewed by each cable system's respective local franchising authority. Section 76.923 records are kept by cable operators in order to demonstrate that charges for the sale and lease of equipment for installation have been developed in accordance with the Commission's rules.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2020–12134 Filed 6–4–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receivership

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the following insured depository institution, was charged with the duty of winding up the affairs of the former institution and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIP

Fund	Receivership name	City	State	Termination date
10528	Fayette County Bank	Saint Elmo	IL	06/01/2020

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination date listed above, the Receivership has been terminated, the Receiver has been discharged, and the Receivership has ceased to exist as a legal entity.

(Authority: 12 U.S.C. 1819)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on June 2, 2020.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2020–12203 Filed 6–4–20; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS20–06]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Collection and Transmission of Annual AMC Registry Fees

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the ASC invites public comments on our intention to request the Office of Management and Budget (OMB) approval to renew an information collection request entitled ''Collection and Transmission of Annual AMC Registry Fees.''

DATES: Written comments must be received on or before August 4, 2020 to be assured of consideration.

ADDRESSES: Commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. You may submit comments, identified by Docket Number AS20–06, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.
- *E-Mail: webmaster@asc.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 289–4101. Include docket number on fax cover sheet.
- *Mail or Hand Delivery/Courier:* Address to Appraisal Subcommittee, Attn: Lori Schuster, Management and Program Analyst, 1325 G Street NW, Suite 500, Washington, DC 20005.

In general, the ASC will enter all comments received into the docket and publish those 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 enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. The ASC will summarize and/or include your comments in the request for OMB's clearance of this information collection.

You may review comments and other related materials that pertain to this action by any of the following methods:

- *Viewing Comments Electronically:* Go to *https://www.regulations.gov.* Enter ''Docket ID AS20–06'' in the Search box and click ''Search.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Viewing Comments Personally:* You may personally inspect comments at the ASC office, 1325 G Street NW, Suite 500, Washington, DC 20005. To make an appointment, please call Lori Schuster at (202) 595–7578.

FOR FURTHER INFORMATION CONTACT: Alice M. Ritter, General Counsel, at (202) 595–7577, or Lori Schuster, Management and Program Analyst, at (202) 595–7578, Appraisal Subcommittee, 1325 G Street NW, Suite 500, Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

Title: Collection and Transmission of Annual AMC Registry Fees.

OMB Number: 3139–0008.

Abstract: States that register and supervise appraisal management companies (AMCs) are required to collect and transmit annual AMC registry fees to the ASC. 12 CFR part 1102, and in particular section 1102.402, established the annual AMC registry fee for States that register and supervise AMCs as follows: (1) In the case of an AMC that has been in existence for more than a year, $25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such State during the previous year; and (2) in the case of an AMC that has not been in existence for more than a year, $25 multiplied by the number of appraisers who have performed an appraisal for the AMC on a covered transaction in such State since the AMC commenced doing business. Performance of an appraisal means the appraisal service requested of an appraiser by the AMC was provided to the AMC. Section 1102.403 requires AMC registry fees to be collected and transmitted to the ASC on an annual basis by States that register and supervise AMCs. Only those AMCs whose registry fees have been transmitted to the ASC are eligible to be on the AMC Registry for the 12-month

period following the payment of the fee. Section 1102.403 clarified that States may align a one-year period with any 12-month period, which may, or may not, be based on the calendar year. The registration cycle is left to the individual States to determine.

Current Action: There are no changes being made to this regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: States; businesses or other for-profit and not-for-profit organizations.

Estimated Number of Respondents: 500 AMCs, 55 States.

Estimated Total Annual Burden Hours: 500 hours.

Frequency of Response: Event generated.

By the Appraisal Subcommittee.

James R. Park,

Executive Director.

[FR Doc. 2020–12174 Filed 6–4–20; 8:45 am]

BILLING CODE 6700–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0118; Docket No. 2020–0001; Sequence No. 4]

Information Collection; Federal Management Regulation; Standard Form 94, Statement of Witness

AGENCY: Office of Government-Wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice; request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an existing information collection requirement regarding OMB Control No: 3090–0118; Standard Form 94, Statement of Witness.

DATES: Submit comments on or before August 3, 2020.

ADDRESSES: Submit comments identified by Information Collection 3090–0118; Standard Form 94, Statement of Witness via *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–0118; Standard Form 94, Statement of Witness''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0118; Standard Form 94, Statement of Witness.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0118; Standard Form 94, Statement of Witness'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite Information Collection 3090–0118; Standard Form 94, Statement of Witness, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Wynter, GSA, Office of Government-wide Policy (MAG), Office of Asset and Transportation Management, at telephone 202–501–3802 or via email to *ray.wynter@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA's Office of Government-wide Policy is announcing the availability of Standard Form 94, Statement of Witness that is publicly available on *http://www.gsa.gov/forms.* This updated Standard Form 94, Statement of Witness is a renewal of a currently approved information collection requirement regarding statement from witnesses. This form will be used to collect information from witnesses reporting accidents and/or damage to Federal Fleet Vehicles.

B. Annual Reporting Burden

Respondents: 290.
Responses per Respondent: 1.
Total Annual Responses: 290.
Hours per Response: 0.333.
Total Burden Hours: 97.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the Regulatory Secretariat Division, at *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0118, Standard Form 94, Statement of Witness, in all correspondence.

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2020–12181 Filed 6–4–20; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–1074; Docket No. CDC–2020–0064]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Colorectal Cancer Control Program (CRCCP) Monitoring Activities. CDC is requesting a revision to OMB No. 0920–1074 to include a redesigned survey, a redesigned clinic-level data collection instrument, and a new quarterly awardee-level program update survey.

DATES: CDC must receive written comments on or before August 4, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0064 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov.*

Please note: *Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Colorectal Cancer Control Program (CRCCP) Monitoring Activities (OMB Control No. 0920–1074, Exp. 7/31/2020)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC)

Background and Brief Description

CDC is requesting a revision to Colorectal Cancer Control Program (CRCCP) Monitoring Activities (OMB Control No. 0920–1074). Based on feedback from awardees and internal subject matter experts, CDC proposes use of a revised annual grantee survey instrument (renamed, Annual Awardee Survey), a revised clinic-level data collection instrument, and a new awardee-level quarterly program update. The number of respondents will also increase from 30 to 35 awardees. Total estimated annualized burden will increase. OMB approval is requested for three years.

Colorectal cancer (CRC) is the second leading cause of death from cancer in the United States among cancers that affect both men and women. There is substantial evidence that CRC screening reduces the incidence of and death from the disease. Screening for CRC can detect disease early when treatment is more effective, and prevent cancer by finding and removing precancerous polyps. Of individuals diagnosed with early stage CRC, more than 90% live five or more years. Despite strong evidence supporting screening, only 68.8% of adults currently report being up-to-date with CRC screening as recommended by the U.S. Preventive Services Task Force, with more than 22 million age-eligible adults estimated to be untested. To reduce CRC morbidity, mortality, and associated costs, use of CRC screening tests must be increased among age-eligible adults with the lowest CRC screening rates.

The purpose of the Colorectal Cancer Control Program (CRCCP) is to partner with health systems and their individual primary care clinics to implement EBIs to increase CRC screening among defined populations of adults ages 50–75 that have CRC screening rates lower than the national, regional, or local rate. The previous cooperative agreement supporting the CRCCP (DP15–1502) funded 30 awardees that are state governments or bona-fide agents, universities, and tribal organizations. All 30 recipients received Component 1 funding, which required recipients to partner with health systems and their primary care clinics to implement at least two of four priority evidence-based interventions (EBIs) described in The Guide to Community Preventive Services as well as other supporting strategies. In addition, six recipients received Component 2 funding to provide clinical screening and follow-up services for a limited number of individuals aged 50–64 in the program's priority population who are asymptomatic, at average risk for CRC, have inadequate or no health insurance for CRC screening, and are low income.

In 2020, CDC issued a new funding opportunity, *Public Health and Health System Partnerships to Increase Colorectal Cancer Screening in Clinical Settings* (DP20–2002), a five-year cooperative agreement to increase CRC screening among defined populations of adults ages 50–75 that have CRC screening rates lower than the national, regional, or local rate. Similar to DP15–1502, DP20–2002 funds recipients to partner with health systems and their primary care clinics to implement multiple EBIs, partner with organizations to support implementation of EBIs in those clinics, and collect high-quality clinic-level data when a clinic is recruited to participate (baseline) and annually thereafter to monitor EBI implementation and assess screening rate changes. DP20–2002 eliminates Component 2 funding to provide direct clinical service delivery. However, DP20–2002 requires recipients to conduct a formal capacity/readiness assessment of potential clinics to implement EBIs, use assessment findings to select appropriate EBIs for implementation, and provide clinics with limited financial resources to support follow-up colonoscopies for under- and uninsured patients after an abnormal CRC screening test.

CDC proposes three information collections—a revised Annual Awardee Survey, a revised Clinic-Level Data Collection Instrument, and a new awardee-level Quarterly Program Update—to reflect the strategies and objectives detailed in DP20–2002.

The previous Annual Awardee Survey assessed: (1) Program management, (2) health information technology, (3) partnerships, (4) data use, (5) training and technical assistance (TA), (6) clinic service delivery. The revised instrument no longer includes questions related to clinic service delivery since these pertained solely to Component 2, which is no longer funded under DP20–2002. In addition, many program management questions were eliminated and will now be gathered via the Quarterly Program Update on a quarterly basis to better inform CDC TA. Several data use questions were eliminated as they did not yield meaningful data to inform

CDC TA during the previous funding cycle.

The previous Clinic-level Data Collection instrument assessed: (1) Health system and clinic characteristics, (2) EBI and supporting activities implementation within clinics; (3) monitoring and quality improvement activities, and (4)CRC screening rates. The revised instrument was reorganized (*e.g.,* sections merged, variables moved to new sections) for increased efficiency and to improve overall data quality. In addition, wording and responses for many variables and their response options have undergone minor revisions to better capture awardees' partnerships with both health systems and clinics, and appropriate capture of baseline and annual variables. The revised instrument gathers information to assess health system and clinic characteristics; program reach; CRC screening practices and outcomes; clinics' quality improvement and monitoring activities; EBI implementation, and additional factors that affect EBI implementation over time.

The new Quarterly Program Update will collect standardized awardee-level information on aspects of program management, including (1) quarterly program expenditures, (2) current staff vacancies, (3) program successes and challenges, and (4) current TA needs. This information collection will provide CDC staff rapid reporting of programmatic information to inform their efforts to provide awardees with tailored TA.

Redesigned data elements will enable CDC to better gauge progress in meeting CRCCP program goals and monitor implementation activities, evaluate outcomes, and identify awardee TA needs. In addition, data collected will inform program improvement and help identify successful activities that need to be maintained, replicated, or expanded.

OMB approval is requested for three years. The number of awardees will increase from 30 awardees in DP15–1502 to 35 awardees in DP20–2002, and the number of clinic partners is expected to increase from 12 to 24 per awardee. Therefore, the total estimated annualized burden hours have increased from 204 to 663 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
CRCCP Awardees	CRCCP Annual Awardee Survey	35	1	15/60	9
	CRCCP Clinic-level Information Collection Instrument.	35	24	43/60	602
	CRCCP Quarterly Program Update	35	4	22/60	52
Total					663

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–12244 Filed 6–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20OS; Docket No. CDC–2020–0062]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled COVID–19 Pandemic Response, Laboratory Data Reporting. The collection will be used to gather comprehensive laboratory testing data to ensure a rapid and thorough federal response to the COVID–19 pandemic.

DATES: CDC must receive written comments on or before August 4, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0062 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

COVID–19 Pandemic Response, Laboratory Data Reporting—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) requests an emergency six-month approval for a New Information Collection titled COVID–19 Pandemic Response, Laboratory Data Reporting. Efforts are underway to ensure that laboratory data—including diagnostic viral testing data and serologic testing data—are comprehensive and readily available from laboratories and other facilities providing testing, including point-of-care testing sites for the public health response to SARS–CoV–2 and COVID–19.

Ensuring a rapid and thorough public health response to the COVID–19 pandemic necessitates comprehensive laboratory testing data. These data contribute to understanding disease incidence and trends: Initiating epidemiologic case investigations, assisting with contact tracing, assessing availability and use of testing resources, and identifying of supply chain issues for reagents and other material. Laboratory testing data, in conjunction with case reports and other data, also provide vital guidance for mitigation and control activities.

Public Law 116–136 § 18115(a), the Coronavirus Aid, Relief, and Economic Security (CARES) Act, requires ''every laboratory that performs or analyzes a test that is intended to detect SARS–CoV–2 or to diagnose a possible case of COVID–19'' to report the results from each such test to the Secretary of the Department of Health and Human Services (HHS).

Through the CARES Act, and other coronavirus supplemental funding packages including the Paycheck Protection Program and Health Care Enhancement Act, jurisdictions have received funding to accelerate and improve data collection and reporting of SARS–CoV–2. Improvements with the laboratory data collection and reporting, laboratory information management systems (LIMS) enhancements and expansions, increased completeness of case data reporting, and improvements with timeliness of reporting are among the prioritized activities for implementation with this funding.

This ICR outlines the requirements for data submission to the U.S. Department of Health and Human Services (HHS) as authorized under this law. In an effort to receive these data in the most efficient manner, the Secretary is requiring that all data be reported through existing public health data reporting methods as described below.

As a guiding principle, data will be sent first to the state or local public health agencies (in accordance with state law or policies) to ensure rapid initiation of case investigations by the state and/or local public health agency. At the same time, laboratory order results will be shared with ordering providers or patients if there is not an ordering provider.

All laboratories, defined as laboratories, non-laboratory testing locations, and other facilities or locations offering point of care testing or in-home testing related to SARS–CoV–2 shall report data for all testing completed, for each individual tested, within 24 hours of result known or determined, on a daily basis to the appropriate state or local public health agency based on the individual's residence.

Reporting to the state and/or local public health agencies meets the requirement for reporting stated above as this information—under current processes and policies—will then be subsequently provided electronically to the Centers for Disease Control and Prevention (CDC) using an existing pathway and storage location for the data.

For the purposes of this ICR, federal burden is only being placed on fifty states, the District of Columbia, Puerto Rico, US Virgin Islands, and Guam. Authorizing legislation comes from Section 301 of the Public Health Service Act (42 U.S.C. 241). Total estimated burden is 9,720 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State epidemiologist or informatics staff	CDC-provided CSV file or HL7 messages.	54	180	1	9,720
Total					9,720

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–12241 Filed 6–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–0213; Docket No. CDC–2020–0061]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the National Vital Statistics Report Forms. This collection is used by State and/or county vital registration offices to report to the Federal government (a) provisional counts of births, deaths, and infant deaths, at the end of each month and (b) annual counts of marriages and divorces/annulments in support of the National Vital Statistics System.

DATES: Written comments must be received on or before August 4, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0061 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

Please note: *All public comment should be submitted through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.
5. Assess information collection costs.

Proposed Project

National Vital Statistics Report Forms (OMB Control No. 0920–0213, Exp. 04/30/2021)—Extension — National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The compilation of national vital statistics dates back to the beginning of the 20th century and has been conducted since 1960 by the Division of Vital Statistics of the National Center for Health Statistics, CDC. The collection of the data is authorized by 42 U.S.C. 242k. This submission requests approval to collect the monthly and annually summary statistics for three years.

The Monthly Vital Statistics Report forms provide counts of monthly occurrences of births, deaths, and infant deaths. Similar data have been published since 1937 and are the sole source of these data at the National level. The data are used by the Department of Health and Human Services and by other government, academic, and private research and commercial organizations in tracking changes in trends of vital events. Respondents for the Monthly Vital Statistics Reports Form are registration officials in each State and Territory, the District of Columbia, and New York City. In addition, local (county) officials in New Mexico who record marriages occurring and divorces and annulments granted in each county of New Mexico will use this form. This form is also designed to collect counts of monthly occurrences of births, deaths, and infant deaths immediately following the month of occurrence.

The Annual Vital Statistics Occurrence Report Form collects final annual counts of marriages and divorces by month for the United States and for each State. These final counts are usually available from State or county officials about eight months after the end of the data year. The data are widely used by government, academic, private research, and commercial organizations in tracking changes in trends of family formation and dissolution. Respondents for the Annual Vital Statistics Occurrence Report Form are registration officials in each State and Territory, the District of Columbia, and New York City.

There are no costs to respondents other than their time. CDC requests approval for 175 annual burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State, Territory, and New Mexico County Officials.	Monthly Vital Statistics Report	91	12	8/60	146
State, Territory, and other officials	Annual Vital Statistics Occurrence Report.	58	1	30/60	29
Total	.....	.....	.....	.....	175

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–12243 Filed 6–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20OT; Docket No. CDC–2020–0063]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled ''Mycoplasma genitalium Treatment Failure Registry.'' The purpose of the collection is to determine which second-line antibiotics are in use for M. genitalium treatment failure and monitor antibiotic resistance patterns for treatment failure cases throughout the United States.

DATES: CDC must receive written comments on or before August 4, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0063 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Mycoplasma genitalium Treatment Failure Registry—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), Division of STD Prevention requests a three-year approval of an information collection request for the Mycoplasma genitalium Treatment Failure Registry, which will entail use of a standardized Case Report Form.

The primary goal of this activity is to establish a registry to monitor cases of Mycoplasma genitalium (*M. genitalium*) treatment failure in the United States. The project objectives are as follows: (1) Using existing clinical data, describe demographic and behavioral factors among patients with documented Mycoplasma genitalium who fail current CDC-recommended treatment. (2) Using existing clinical data, describe antibiotic regimens utilized among patients with *Mycoplasma genitalium* treatment failure, including documentation of clinical and microbiologic cure. (3) Using existing laboratory specimens, monitor genetic mutations associated with macrolide or fluroquinolone antibiotic resistance. Data captured on the standardized Case Report Form will be analyzed to determine outcomes from usage of second-line antibiotic therapy for *M.*

gentialium. These data may inform future CDC STD Treatment Guidelines.

There are an estimated 100 respondents (anticipated to report once per year) who will be clinicians in private and public health care settings. The data collection is necessary as there are no current national recommendations for patients who fail current CDC-recommended therapy for *M. genitalium.* Each case report form is anticipated to take up to 60 minutes to complete.

This data collection provides CDC with information to determine which second-line treatments are most clinically effective, as well as determining antibiotic resistance patterns of *M. genitalium* throughout the US. There are no costs to respondents other than their time. The estimated annualized burden hours for this data collection are 100 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Physician or Nurse Practitioner.	M. genitalium Treatment Failure Registry Case Report Form.	100	1	1	100

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–12242 Filed 6–4–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Generic Clearance for the Comprehensive Child Welfare Information System (CCWIS) Review and Technical Assistance Process (New Collection)

AGENCY: Children's Bureau, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Children's Bureau (CB), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to establish a generic clearance to collect information to assess regulatory requirements of title IV–E agencies' Comprehensive Child Welfare Information System (CCWIS) and ensure that the CCWIS is utilized for purposes consistent with the efficient, economical, and effective administration of the title IV–B and IV–E plans. The information collected is intended to be used for review and technical assistance processes.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: This initial request is to establish an overarching generic for CCWIS Review and Technical Assistance (TA) information collections and includes six initial TA tools for title IV–E agencies to self-assess their conformity to CCWIS project and design requirements at 45 CFR 1355.52–3. The initial six TA tools include intake, investigation, case management, adoption, foster care and service provider management, and administration.

In the future, ACF will submit under this generic clearance mechanism additional TA tools for title IV–E agencies to self-assess design, data quality, usability, reporting, data exchanges, external systems, eligibility, finance, Child Welfare Contributing Agencies, and other tools, as needed, to assess new child welfare programs and modern system architecture.

The CCWIS requirements at 45 CFR 1355.55 require the review, assessment, and inspection of the planning, design, development, installation, operation, and maintenance of each CCWIS project on a continuing basis. The Advance Planning Document regulations at 45 CFR 95.621 require periodic reviews of state and local agency methods and practices to insure that information systems, including CCWIS, are utilized for purposes consistent with proper and efficient administration.

Respondents: Title IV–E agencies under the Social Security Act.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
CCWIS Self-Assessment—Intake	55	1	10	550
CCWIS Self-Assessment—Investigation	55	1	10	550
CCWIS Self-Assessment—Case Management	55	1	10	550
CCWIS Self-Assessment—Adoption	55	1	10	550
CCWIS Self-Assessment—Foster Care and Service Provider Management	55	1	10	550
CCWIS Self-Assessment—Administration	55	1	10	550
Future Tools to be developed	55	10	12	6,600

Estimated Total Annual Burden Hours: 9,900.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

(Authority: 5 U.S.C. 301; 42 U.S.C. 470, 620 *et seq.,* 622(b), 629b(a), 652(b), 654A, 670 *et seq.,* 671(a), 1302, and 1396a(a))

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–12125 Filed 6–4–20; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1301]

Q3C(R8) Recommendations for the Permitted Daily Exposures for Three Solvents—2-Methyltetrahydrofuran, Cyclopentyl Methyl Ether, and Tert-Butyl Alcohol—According to the Maintenance Procedures for the Guidance Q3C Impurities: Residual Solvents; International Council for Harmonisation; Draft Guidance for Industry; Availability

Correction

In notice document 2020–11280, appearing on pages 31785 through 31786 in the issue of Wednesday, May 27, 2020 make the following correction.

On page 31785, in the first column, on the last line, ''July 26, 2024'' should read ''July 27, 2020''.

[FR Doc. C1–2020–11280 Filed 6–4–20; 8:45 am]

BILLING CODE 1300–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1335]

Authorization of Emergency Use of Certain Medical Devices During COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance and reissuance of Emergency Use Authorizations (EUAs) (the Authorizations) for certain medical devices related to the coronavirus disease 2019 (COVID–19) public health emergency. FDA has issued, and in some cases reissued, the Authorizations listed in this document under the Federal Food, Drug, and Cosmetic Act (FD&C Act). These Authorizations contain, among other things, conditions on the emergency use of the authorized products. The Authorizations follow the February 4, 2020, determination by Secretary of Health and Human Services (HHS) that there is a public health emergency that has significant potential to affect national security or the health and security of U.S. citizens living abroad, which involves the virus that causes COVID–19, and the subsequent declarations on February 4, 2020, March 2, 2020, and March 24, 2020, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the virus that causes COVID–19, personal respiratory protective devices, and medical devices, including alternative products used as medical devices, respectively, subject to the terms of any authorization issued under the FD&C Act. These Authorizations, which include an explanation of the reasons for issuance and reissuance, are listed in this document and are available on FDA's website at the links indicated in this document.

DATES: These Authorizations are effective on their date of issuance.

ADDRESSES: Submit written requests for single copies of the EUAs to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorizations.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by a biological, chemical, radiological, or nuclear agent or agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50, U.S. Code, of attack with (i) a biological, chemical, radiological, or nuclear agent or agents; or (ii) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces; [1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency,

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d-6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b and 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act. Because the statute is self-executing, regulations or guidance are not required for FDA to implement the EUA authority.

II. Electronic Access

An electronic version of this document and the full text of the Authorizations are available on the internet at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

III. The Authorizations

Having concluded that the criteria for the issuance and, in some cases reissuance, of the following Authorizations under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of the following products for diagnosing, treating, or preventing COVID–19 subject to the terms of each Authorization. The Authorizations in their entirety, including any authorized fact sheets and other written materials, are available on the internet from the FDA web page entitled ''Emergency Use Authorization,'' available at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.* The lists that follow include Authorizations issued, in some cases reissued, through April 10, 2020, and we have included explanations of the reasons for their issuance, as required by section 564(h)(1) of the FD&C Act. FDA is hereby announcing the following Authorizations for in vitro diagnostics: [3]

- CDC 2019–Novel Coronavirus (2019–nCoV) Real-Time RT–PCR Diagnostic Panel (CDC), issued February 4, 2020, and reissued March 15, 2020;
- New York SARS–CoV–2 Real-time Reverse Transcriptase (RT)–PCR Diagnostic Panel (Wadsworth Center, NYSDOH), issued February 29, 2020, and reissued March 10, 2020;
- Roche Molecular Systems, Inc.'s (RMS) cobas SARS–CoV–2, issued March 12, 2020;
- Thermo Fisher Scientific, Inc.'s TaqPath COVID–19 Combo Kit, issued March 13, 2020;
- Hologic, Inc.'s Panther Fusion SARS–CoV–2, issued March 16, 2020;
- Laboratory Corporation of America's COVID–19 RT–PCR Test, issued March 16, 2020;
- Quidel Corp.'s Lyra SARS–CoV–2 Assay, issued March 17, 2020;
- Quest Diagnostics Infectious Disease, Inc.'s Quest SARS–CoV–2 rRT–PCR, issued March 17, 2020;
- Abbott Molecular's Abbott Real*Time* SARS–CoV–2 assay, issued March 18, 2020;
- DiaSorin Molecular LLC's Simplexa COVID–19 Direct assay, issued March 19, 2020;
- GenMark Diagnostics, Inc.'s ePlex SARS–CoV–2 Test, issued March 19, 2020;
- Primerdesign Ltd's Primerdesign Ltd COVID–19 genesig Real-Time PCR assay, issued March 20, 2020;
- Cepheid's Xpert Xpress SARS–CoV–2 test, issued March 20, 2020;
- BioFire Defense, LLC's BioFire COVID–19 Test, issued March 23, 2020;
- Mesa Biotech Inc.'s Accula SARS–Cov–2 Test, issued March 23, 2020;
- PerkinElmer, Inc.'s PerkinElmer New Coronavirus Nucleic Acid Detection Kit, issued March 24, 2020;
- Avellino Lab USA, Inc.'s AvellinoCoV2 test, issued March 25, 2020;
- BGI Genomics Co. Ltd.'s Real-Time Fluorescent RT–PCR Kit for Detecting SARS–2019–nCoV, issued March 26, 2020;

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

[3] As set forth in the EUAs for these devices, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the devices may be effective in diagnosing COVID–19, and that the known and potential benefits of the devices, when used for diagnosing COVID–19, outweigh the known and potential risks of such devices; and (3) there is no adequate, approved, and available alternative to the emergency use of the devices.

- Abbott Diagnostics Scarborough, Inc.'s ID NOW COVID–19, issued March 27, 2020;
- Luminex Molecular Diagnostics, Inc. Luminex Molecular Diagnostics, Inc.'s NxTAG CoV Extended Panel Assay, issued March 27, 2020;
- NeuMoDx Molecular, Inc.'s NeuMoDx SARS–CoV–2 Assay, issued March 30, 2020;
- QIAGEN GmbH's QIAstat–Dx Respiratory SARS–CoV–2 Panel, issued March 30, 2020;
- Cellex Inc.'s qSARS–CoV–2 IgG/IgM Rapid Test, issued April 1, 2020;
- Ipsum Diagnostics, LLC's COV–19 IDx assay, issued April 1, 2020;
- Becton, Dickinson and Company, BioGX SARCoV–2 Reagents for BD MAX System, issued April 2, 2020;
- Luminex Corporation, ARIES SARS–CoV–2 Assay, issued April 3, 2020;
- ScienCell Research Laboratories, ScienCell SARS–CoV–2 Coronavirus Real-time RT–PCR (RT–qPCR) Detection Kit, issued April 3, 2020;
- Co-Diagnostics, Inc., Logix Smart Coronavirus Disease 2019 (COVID–19) kit, issued April 3, 2020;
- Gnomegen LLC's, Gnomegen COVID–19 RT–Digital PCR RT–Digital PCR Detection Kit, issued on April 6, 2020;
- InBios International Inc.'s, Smart Detect SARS–CoV–2 rRT–PCR Kit, issued on April 7, 2020;
- Becton, Dickinson and Company's, BD SARS–CoV–2 Reagents for BD MAX System, issued on April 8, 2020;
- DiaCarta, Inc.'s QuantiVirus SARS–CoV–2 Test kit, issued on April 8, 2020;
- Atila BioSystems, Inc.'s, iAMP COVID–19 Detection Kit, issued on April 10, 2020; and
- Certain Molecular-Based Laboratory Developed Tests (LDTs) for COVID–19 that are developed by laboratories certified under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) to perform high complexity tests and are authorized for use by the singular developing laboratory, issued on March 31, 2020 (a current list of tests included under this EUA is available at *https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations*).

FDA is hereby announcing the following Authorizations for personal respiratory protective devices: [4]

- Certain National Institute for Occupational Safety and Health (NIOSH)-Approved Air Purifying Respirators for Use in Health Care Settings During Response to the COVID–19 Public Health Emergency, issued March 2, 2020, with reissuance on March 27, 2020, and March 28, 2020;
- Certain Imported, Non-NIOSH-Approved Disposable Filtering Facepiece Respirators, issued March 24, 2020, with reissuance on March 28, 2020 (a current list of respirators included under this EUA is available at *https://www.fda.gov/media/136731/download*); and,
- Certain Non-NIOSH-Approved Disposable Filtering Facepiece Respirators Manufactured in China, issued April 3, 2020 (a current list of respirators included under this EUA is available at *https://www.fda.gov/media/136663/download*).

FDA is hereby announcing the following Authorizations for other medical devices:

- Certain ventilators, anesthesia gas machines modified for use as ventilators, and positive pressure breathing devices modified for use as ventilators (collectively referred to as ''ventilators''), ventilator tubing connectors, and ventilator accessories, issued March 24, 2020 (a current list of products included under this EUA is available at *https://www.fda.gov/media/136528/download*); [5]
- Battelle Memorial Institute's Battelle Decontamination System (Battelle CCDS Critical Care Decontamination System), issued March 28, 2020, with reissuance March 29, 2020; [6]
- STERIS Corporation's STERIS Sterilization Systems (STERIS V–PRO 1 Plus, maX, and maX2 Low Temperature Sterilization Systems), issued April 9, 2020; [7]
- Certain Face Shields, issued April 9, 2020; [8]

[4] As set forth in the EUAs, FDA has concluded that: (1) The SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is either reasonable to believe that the authorized respirators may be effective in preventing healthcare personnel (HCP) exposure to pathogenic biological airborne particulates during Filtering Facepiece Respirator (FFR) shortages, and that the known and potential benefits of the authorized respirators, when used to prevent HCP exposure to such particulates during FFR shortages during COVID–19, outweigh the known and potential risks of such products, and (3) there is no adequate, approved, and available alternative for the emergency use.

[5] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the authorized ventilators, ventilator tubing connectors, and ventilator accessories may be effective in treating patients during the COVID–19 pandemic, and the known and potential benefits of such products, when used to treat patients during the COVID–19 pandemic, outweigh the known and potential risks of such products, and (3) there is no adequate, approved, and available alternative to the emergency use of the authorized ventilators, ventilator tubing connectors, and ventilator accessories for treating patients during the COVID–19 pandemic.

[6] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Battelle Decontamination System may be effective at preventing exposure to pathogenic airborne particulates when there are insufficient supplies of FFRs during the COVID–19 pandemic by decontaminating, for a maximum of 20 decontamination cycles per respirator, compatible N95 respirators that are contaminated or potentially contaminated with SARS–CoV–2 or other pathogenic microorganisms, and that the known and potential benefits of the Battelle Decontamination System, when used to decontaminate compatible N95 respirators for reuse by HCP to prevent exposure to pathogenic airborne particulates during FFR shortages during the COVID–19 pandemic, outweigh the known and potential risks; and (3) there is no adequate, approved, and available alternative to the emergency use of the Battelle Decontamination System for decontaminating compatible N95 respirators for reuse by HCP during FFR shortages during the COVID–19 pandemic.

[7] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the STERIS Sterilization Systems may be effective at preventing exposure to pathogenic airborne particulates when there are insufficient supplies of N95 respirators during the COVID19 pandemic by decontaminating for a maximum of 10 decontamination cycles per respirator, compatible N95 respirators that are contaminated or potentially contaminated with SARS–CoV–2 or other pathogenic microorganisms, and that the known and potential benefits of the STERIS Sterilization Systems, when used to decontaminate compatible N95 respirators for single-user reuse by HCP to prevent exposure to pathogenic airborne particulates during N95 respirator shortages during the COVID–19 pandemic, outweigh the known and potential risks; and (3) there is no adequate, approved, and available alternative to the emergency use of the STERIS Sterilization Systems for decontaminating compatible N95 respirators for reuse by HCP during N95 respirator shortages during the COVID–19 pandemic.

[8] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the authorized face shields may be effective at preventing HCP exposure to fluid biological airborne particulates during face shield shortages by providing minimal or low barrier HCP protection to the wearer, and that the known and potential benefits of face shields, when used to prevent HCP exposure to such particulates during face shield shortages during COVID–19 outweigh the known and potential risks of such product; and (3) there is no adequate, approved, and available alternative to the emergency use of these face shields for preventing HCP exposure to such particulates during face shield shortages to prevent disease spread during the COVID–19 pandemic.

• Terumo BCT Inc. and Marker Therapeutics AG's, Spectra Optia Apheresis System with the Depuro D2000 Adsorption Cartridge (an Extracorporeal Blood Purification (EBP) Device), issued on April 9, 2020;[9] and,

• CytoSorbents, Inc.'s, CytoSorb EBP Device, issued on April 10, 2020.[10]

Dated: May 29, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–12117 Filed 6–4–20; 8:45 am]

BILLING CODE 4164–01–P

[9] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Spectra Optia Apheresis System with the Depuro D2000 Adsorption Cartridge may be effective in treating patients 18 years of age or older with confirmed COVID–19 admitted to the intensive care unit (ICU) with confirmed or imminent respiratory failure, and that the known and potential benefits of the Spectra Optia Apheresis System with the Depuro D2000 Adsorption Cartridge, when used to treat COVID–19 patients 18 years of age or older, outweigh the known and potential risks of the Spectra Optia Apheresis System with the Depuro D2000 Adsorption Cartridge; and (3) there is no adequate, approved, and available alternative to the emergency use of the Spectra Optia Apheresis System with the Depuro D2000 Adsorption Cartridge for the treatment of these COVID–19 patients.

[10] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the CytoSorb device may be effective in treating patients 18 years of age or older with confirmed COVID–19 admitted to the ICU with confirmed or imminent respiratory failure, and that the known and potential benefits of the CytoSorb device, when used to treat such patients, outweigh the known and potential risks of the CytoSorb device; and (3) there is no adequate, approved, and available alternative to the emergency use of the CytoSorb device for the treatment of these COVID–19 patients.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Dates and Times:

Wednesday, June 17, 2020: 10:00 a.m.–5:00 p.m. EDT

Thursday, June 18, 2020 10:00 a.m.–4:00 p.m. EDT

Place: Virtual.

Status: Open.

Purpose: At the June 17–18, 2020 meeting, the Committee will receive briefings from HHS officials, hold discussions on several health data policy topics and refine its workplan for the upcoming 12-month period.

The Subcommittee on Privacy, Confidentiality and Security will lead a discussion with the full Committee to reach consensus on plans for a project focused on data privacy and security protections related to current public health surveillance activities.

The Subcommittee on Standards will provide updates on plans for the upcoming August hearing intended to solicit information about the costs and benefits of a new operating rule for connectivity and operating rules for the prior authorization transaction proposed by the Council for Affordable Quality Healthcare (CAQH), Committee on Operating Rules for Information Exchange (CORE) Board. The Subcommittee also will provide an update on progress of the Office of the National Coordinator (ONC) Health Information Technology Advisory Committee (HITAC) Task Force on Intersection of Clinical and Administrative Data (ICAD), on which four NCVHS members participate. The Committee will initiate a discussion of the NCVHS 14th Report to Congress, including a proposed approach, major themes, and timeline including reflection on previous reports to Congress for context.

The Committee has invited presentations from the HHS Office of the Assistant Secretary for Planning and Evaluation, Science and Data Policy Division, the National Center for Health Statistics (NCHS), and CDC's Deputy Director for Public Health Science and Surveillance (DDPHSS), to inform Committee discussion of the data landscape transformed by the COVID–19 epidemic. The Committee also has invited CMS's Division of National Standards to provide an update on its activities and plans. On the afternoon of the second day, members will consider and discuss priorities for Committee focus and revise the Committee workplan based on information presented during the meeting.

A public comment period will be offered on the second day. Meeting times and topics are subject to change. Please refer to the posted agenda for any updates.

For Further Information Contact: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the home page of the NCVHS website: *ncvhs.hhs.gov,* where further information including an agenda and instructions to access the broadcast of the meeting will also be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (770) 488–3210 as soon as possible.

Sharon Arnold,

Associate Deputy Assistant Secretary for Planning and Evaluation, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2020–12236 Filed 6–4–20; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel Vaccine and Treatment Evaluation Units (VTEUs): Enhancing Capability and Capacity (UM1 Clinical Trial Required).

Date: July 7, 2020.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21B, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F21B,

Bethesda, MD 20892–9834, (240) 669–5026, *haririmf@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 1, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12259 Filed 6–4–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine Notice of Meetings Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Literature Selection Technical Review Committee, June 11–12, 2020, 8:30 a.m. to 5:00 p.m., video assisted meeting, which was published in the **Federal Register** on April 20, 2020, 85 FR 76, Page 21868.

This notice is being amended to change the meeting dates to June 10–11, 2020 and the times for both days from 10:00 a.m. to 3:00 p.m. This meeting will be a video assisted meeting and will be closed to the public.

Dated: June 2, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12254 Filed 6–4–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BICCN: Human and NHP Brain Cell Atlases (U01) & Scalable Tech and Tools for Brain Cell Census (R01).

Date: July 1, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Interventions and Services RFA.

Date: July 1, 2020.

Time: 11:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Dysregulation and Proximal Risk for Suicide Review Meeting (R01 & R21).

Date: July 9, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: June 2, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12253 Filed 6–4–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2) and Coronavirus Disease 2019 (COVID–19).

Date: June 25, 2020.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ruth S. Grossman, DDS, Scientific Review Officer, Office Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12J, Bethesda, MD 20892, *grossmanrs@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 1, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12252 Filed 6–4–20; 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; Collaborative Research at the NIH Clinical Center.

Date: July 9, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W240, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609, Medical Center Drive, Room 7W240, Rockville, MD 20850, 240–276–5122, *hasan.siddiqui@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Stimulating Access to Research in Residency (StARR) (R38).

Date: July 9, 2020.

Time: 2:00 p.m. to 4:00 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, Resources Training and Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W602, Rockville, MD 20850, 240–276–6456, *tangd@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Comprehensive Partnerships to Advance Cancer Health Equity (CPACHE) (U54).

Date: July 9, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W624, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Timothy C. Meeker, M.D., Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W624, Rockville, MD 20850, 240–276–6464, *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Center Support Grant (P30).

Date: July 16, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Caterina Bianco, M.D, Ph.D., Chief, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W110, Rockville, MD 20850, 240–276–6459, *biancoc@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee A Cancer Centers.

Date: July 30, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W530, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Shamala K. Srinivas, Ph.D., Associate Director, Office of Referral, Review, and Program Coordination, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W530, Rockville, MD 20850, 240–276–6442, *ss537t@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: June 2, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12256 Filed 6–4–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel HIV/AIDS Clinical Trials Units (UM1 Clinical Trial Required).

Date: June 15, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40, Rockville, MD 20892–9823, 240–669–5035, *unferrc@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 1, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12257 Filed 6–4–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS–CoV–2) and Coronavirus Disease 2019 (COVID–19).

Date: June 22, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Mohammed S. Aiyegbo, Ph.D., Scientific Review Officer, AIDS Research Review Branch, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70, Rockville, MD 20852, 301–761–7106, *mohammed.aiyegbo@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 1, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–12249 Filed 6–4–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information—Long-Term Monitoring of Health Care System Resilience

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Request for Information.

SUMMARY: The Office of the Assistant Secretary for Health (OASH) in the Department of Health and Human Services seeks to gain a more comprehensive understanding of how organizations, networks, non-federal government agencies, and other relevant stakeholders in the United States have operationally defined ''resilience'' in their respective components of the health system; including their use of data, analytic approaches and proven indicators. OASH also seeks to identify opportunities to strengthen the U.S. healthcare system, as a whole, through public-private partnerships in data sharing and comprehensive analytics. OASH welcomes any public feedback related to how these questions should be addressed and/or potential solutions. The set of questions is available in the **SUPPLEMENTARY INFORMATION** section below.

DATES: To be assured consideration, comments must be received at the email address provided below, no later than midnight Eastern Time (ET) on July 8, 2020.

ADDRESSES: Individuals are encouraged to submit responses electronically to *OASHcomments@hhs.gov.* Please indicate ''RFI RESPONSE'' in the subject line of your email. Submissions received after the deadline will not be reviewed. Responses to this notice are not offers and cannot be accepted by the federal government to form a binding contract or issue a grant. Respond concisely and in plain language. You may use any structure or layout that presents your information well. You may respond to some or all of our questions, and you can suggest other factors or relevant questions. You may also include links to online material or interactive presentations. Clearly mark any proprietary information, and place it in its own section or file. Your response will become government property, and we may publish some of its non-proprietary content.

FOR FURTHER INFORMATION CONTACT: Dr. Leith States, Chief Medical Officer, Office of the Assistant Secretary for Health (202) 260–2873.

SUPPLEMENTARY INFORMATION:

Background

On January 31st, the U.S. Department of Health and Human Services (HHS) declared a public health emergency due to the outbreak of the 2019 Novel Coronavirus, now known as COVID–19. To date, the federal government has engaged in intensive efforts to prevent and mitigate the transmission of COVID–19 within the United States. These efforts required unprecedented changes in the functioning of private businesses, personal lives, the provision of public services and healthcare. Early interventions focused primarily on the redirection of the provision of healthcare resources towards individuals with COVID–19 and mitigation strategies to prevent the spread of the virus, including markedly diminished access to health system services.

Anecdotal reports and experiences from the frontlines, and emerging data, indicate that the COVID–19 response has consequentially resulted in limited access to routine and emergency healthcare services in many, if not most, communities. In regions with significant burdens of COVID–19 cases, local health systems have faced challenges with surge capacity needed to treat COVID–19 patients. Furthermore, mitigation strategies to reduce the transmission of COVID–19 have altered the delivery of healthcare services across the board, with many organizations shifting to providing care via telehealth, reducing the scale or scope of their healthcare services or eliminating access, altogether. Also, human behaviors around accessing healthcare have been altered in the midst of recommendations for social isolation/distancing.

Response to a health crisis, such as the COVID–19 pandemic, necessitates a robust public health response and a highly resilient, adaptable health care delivery system that can meet the evolving needs of communities. Although there is not a common definition of ''health system resilience'' (encompassing the provision of direct clinical care, preventive medicine and public health activities), the most referenced definition defines it as ''the capacity of health actors, institutions, and populations to prepare for and effectively respond to crises; maintain core functions when a crisis hits; and, informed by lessons learned during the crisis, reorganize if conditions require it.'' [1] Maintaining health system resilience, particularly during and following the COVID–19, is a critical concern in order to ensure the delivery of high-quality care, from prevention to high-acuity inpatient care, for all conditions.

Scope and Assumptions

- The purpose of this Request for Information (RFI) is to gain a more comprehensive understanding of how organizations, networks, non-federal government agencies, and other relevant stakeholders in the United States have operationally defined ''resilience'' in their respective components of the health system; including their use of data, analytic approaches and proven indicators. These indicators and data sets should be able to quantify the impact of disturbances, such as the COVID–19 pandemic, on health care availability, access, timeliness, and quality.

[1] Available at: *https://www.thelancet.com/action/showPdf?pii=S0140-6736%2815%2960755-3.*

• The RFI also seeks to identify opportunities to strengthen the U.S. healthcare system, as a whole, through public-private partnerships in data sharing and comprehensive analytics. The RFI seeks to identify organizations that would be interested in discussing the form and function of such collaborations.

• The definition of ''health'' system or services and/or ''healthcare'' system or services, for the purposes of this RFI, is in the broadest sense. We seek to understand resilience implications on the provision of health services in all dimensions.

Our Questions

Barrier and Opportunities for Health System Resilience

1. What have been the most significant barriers to assessing, monitoring, and strengthening health system resilience in the U.S.?

2. What policies and programs can be improved to mitigate the risk of COVID–19 and avoid negative impacts on patient outcomes?

3. What scientific advances are needed to assess and address vulnerabilities in the U.S. healthcare system during the COVID–19 response and in future disturbances to the healthcare system?

Key Indicators & Data Sources of Health System Resilience

1. What is your definition of health system resilience within the context of your organization? Does the definition of resilience need to be defined differently based on geographic region and/or the domain of healthcare being assessed?

2. What key indicators or data sets are being used within your organization to assess health system resilience?

3. What existing methods, data sources, and analytic approaches are being used to assess and monitor health system resilience in private healthcare systems?

4. What selected health conditions should be used as indicators of healthcare availability, access, timeliness, and quality, in terms of treatment and preventive services?

Public/Private Data Sources

1. What data sources does your organization use to assess the resilience of the health system? What demographic populations are covered by these data systems? Do these data systems capture urban-rural and other geographic differences?

2. How are you using these data sources to inform your public health response?

Public-Private Partnerships

1. Provide ideas of the form and function of a public-private partnership model to continually assess and monitor health system resilience and individual as well as population health outcomes?

2. What private and public sectors should HHS engage as part of such a collaborative effort?

HHS encourages all potentially interested parties—individuals, associations, governmental, non-governmental organizations, academic institutions, and private sector entities—to respond. To facilitate review of the responses, please reference the question category and number in your response.

Dated: June 2, 2020.

Paul Reed,

Deputy Assistant Secretary for Health, Medicine & Science, Office of the Assistant Secretary for Health.

[FR Doc. 2020–12238 Filed 6–4–20; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of an Agency Information Collection Activity Under OMB Review: Security Appointment Center (SAC) Visitor Request Form and Foreign National Vetting Request

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0068, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The collection involves gathering information from individuals who plan to visit all TSA facilities in the National Capital Region (NCR). In addition, TSA is revising the collection to transition TSA Forms 2802, 2816A, and 2816B into Common Forms to streamline the information collection process.

DATES: Send your comments by July 6, 2020. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be identified by Docket ID: TSA–2013–0001 and sent to the Federal eRulemaking Portal, *http://www.regulations.gov.* Please follow the portal instructions for submitting comments. This process is conducted in accordance with 5 CFR 1320.1.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on March 4, 2020, 85 FR 12800.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Title: Security Appointment Center (SAC) Visitor Request Form and Foreign National Vetting Request.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0068.

Form(s): TSA Forms 2802, 2816A, and 2816B.

Affected Public: Visitors to TSA facilities in the National Capital Region.

Abstract: The Secretary of the Department of Homeland Security (DHS) is authorized to protect property owned, occupied, or secured by the Federal Government. *See* 40 U.S.C. 1315. *See also* 41 CFR 102–81.15 (requires Federal agencies to be responsible for maintaining security at their own or leased facilities). To implement this requirement, DHS policy requires all visitors to DHS facilities in the NCR [1] to have a criminal history records check through the National Crime Information Center (NCIC) system before accessing the facility. In reviewing the NCIC results, TSA will consider whether an individual could potentially pose a threat to the safety of TSA employees, contractors, visitors, or the facility. TSA is revising the collection to transition the applicable forms, TSA Forms 2802, 2816A, and 2816B, into Common Forms. Common Forms permit Federal agency users beyond the agency that created the form (*e.g.,* Department of Homeland Security or U.S. Office of Personnel Management) to streamline the information collection process in coordination with OMB.

Number of Respondents: 29,595.

Estimated Annual Burden Hours: An estimated 226 hours annually.

Dated: June 2, 2020.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2020–12251 Filed 6–4–20; 8:45 am]

BILLING CODE 9110–05–P

[1] TSA facilities in the NCR include TSA Headquarters, the Freedom Center, the Transportation Security Integration Facility (TSIF), the Metro Park office complex (Metro Park), and the Annapolis Junction facility (AJ).

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–EQD–SSB–NPS0028676; PPWONRADE3, PPMRSNR1Y.NM000 (200); OMB Control Number 1024–0216]

Agency Information Collection Activities; National Park Service Visitor Survey Card

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 4, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting NPS Information Collection Clearance Officer, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email to *phadrea_ponds@nps.gov.* Please reference Office of Management and Budget (OMB) Control Number 1024–0216 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Bret Meldrum by email at *bret_meldrum@nps.gov,* or by telephone at 970–267–7295.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: As required by the Government Performance and Results Act (GPRA) codified in Public Law 103–62, the NPS uses the Visitor Survey Card (VSC) to monitor and report performance, accomplishments and progress toward pre-established management goals. The VSC is used to measure each park unit's performance related to NPS Management Policy and GPRA Goals IIa1 (visitor satisfaction) and IIb1 (visitor understanding and appreciation). Each year, approximately 330 participating NPS units use the VSC to collect data to evaluate visitor perception and satisfaction of service and facility quality, awareness of park significance, and basic demographic information. Park managers, superintendents and the NPS Social Science Program use the information collected to understand visitor use and improve park services and facilities to develop long-term strategic plans, annual goals, and performance improvement plans.

Title of Collection: National Park Service Visitor Survey Card.

OMB Control Number: 1024–0216.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: General Public, any person visiting the national park during the sampling period.

Total Estimated Number of Annual Respondents: 62,270.

Total Estimated Number of Annual Responses: 62,270.

Estimated Completion Time per Response: 3 minutes to complete the full survey.

Total Estimated Number of Annual Burden Hours: 5,525 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: One-time, on occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor nor is a person required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2020–11716 Filed 6–4–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–D–COS–POL–30231; PPWODIREP0; PPMPSAS1Y.YP0000]

Notice of the June 30, 2020, Teleconference Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of teleconference.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the National Park System Advisory Board (Board) will meet as noted below.

DATES: The teleconference meeting will be held on Tuesday, June 30, 2020, from 11:00 a.m., to 5:00 p.m., Eastern Daylight Time. For deadlines and instructions on registering to participate, submitting written material and giving an oral presentation, please see guidance under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Staff Director for the National Park System Advisory Board, Office of Policy, National Park Service, telephone (202) 513–7053, or email *joshua_winchell@nps.gov.*

SUPPLEMENTARY INFORMATION: The Board has been established by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906, and is regulated by the Federal Advisory Committee Act.

The Board will convene its meeting at 11:00 a.m. and adjourn at 5:00 p.m. The Board will receive briefings and discuss topics related to improving the visitor experience in NPS managed units and workforce planning for the next century. The final agenda and briefing materials will be posted to the Board's website prior to the meeting at *https://www.nps.gov/advisoryboard.htm.*

The meeting is open to the public. Interested persons may choose to make oral comments at the meeting during the designated time for this purpose. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Interested parties should contact the Staff Director for the Board (see **FOR FURTHER INFORMATION CONTACT**), for advance placement on the public speaker list for this meeting. Members of the public may also choose to submit written comments by emailing them to *joshua_winchell@nps.gov.*

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2020–12247 Filed 6–4–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0009; DS63644000 DRT000000.CH7000 201D1113RT; OMB Control Number 1012–0008]

Agency Information Collection Activities; Collection of Monies Due the Federal Government

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Office of Natural Resources Revenue (ONRR) is proposing to renew an information collection. Through this Information Collection Request (ICR), ONRR seeks renewed authority to collect information related to the paperwork requirements under its regulations covering cross-lease netting in the calculation of late-payment interest; a lessee's designation of designee; and Tribal permission for recoupment on Indian oil and gas leases.

DATES: Interested persons are invited to submit comments on or before August 4, 2020.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Mr. Luis Aguilar, Regulatory Specialist, ONRR, Building 85, MS 64400B, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225, or by email to *Luis.Aguilar@onrr.gov.* Please reference Office of Management and Budget (OMB) Control Number 1012–0008 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mr. Hans Meingast, Financial Services, FM, ONRR by email at *Hans.Meingast@onrr.gov* or by telephone at (303) 231–3221. To inquire about form ONRR–4425, please contact Ms. April Lockler, Reference & Reporting Management (RRM), ONRR by email at *April.Lockler@onrr.gov* or by telephone at (303) 231–3105.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. ONRR may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, ONRR is inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps ONRR to assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

ONRR is especially interested in public comments addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. ONRR will include or summarize each comment in its request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibility is to carry out a comprehensive inspection, collection, and fiscal and production accounting and auditing system that provides the capability to: (1) Accurately determine mineral royalties, interest, and other payments owed, (2) collect and account for such amounts in a timely manner, and (3) disburse the funds collected.

The Secretary also has a trust responsibility to seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

The laws pertaining to mineral leases on Federal and Indian lands and the OCS are posted at *http://www.onrr.gov/Laws_R_D/PubLaws/default.htm.*

(a) *General Information:* When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a royalty share in value or volume of production from the leased lands. The lessee also agrees to report certain information to the lessor related to the disposition of the minerals. This information is generally available within a lessee's records or others involved in developing, transporting, processing, purchasing, or selling Federal and Indian minerals. The information collected includes data necessary to ensure correct product valuation and royalty payments.

(b) *Information Collections:* This ICR covers unique reporting circumstances under 30 CFR part 1218 addressing (1) cross-lease netting in the calculation of late-payment interest; (2) a lessee's designation of designee; and (3) Tribal permission for recoupment on Indian oil and gas leases.

(1) Cross-Lease Netting in Calculation of Late-Payment Interest: Regulations under § 1218.54 require ONRR to assess interest on unpaid or underpaid amounts. ONRR distributes late-payment interest revenues to States, Indian Tribes, and the U.S. Treasury based on financial lease distribution information. Current regulations under § 1218.42 provide that an overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine the net payment subject to interest when certain conditions are met. ONRR calls this process cross-lease netting. The payor must demonstrate that a cross-lease netting exception exists by submitting production reports, pipeline allocation reports, or other similar documentary evidence. This information is necessary for ONRR to calculate the correct interest amount and ensure that it collects in full all monies owed to the Federal Government.

(2) Designation of Designee: The Federal Oil and Gas Royalty Management Act (FOGRMA) defines a ''lessee'' to include the record-title holder and also any operating-rights owners if those rights were severed from the record title. *See* 30 U.S.C. 1702(7). FOGRMA states that operating-rights owners are primarily liable and record-title owners are secondarily liable for payment obligations on Federal oil and gas leases. *See* 30 U.S.C. 1712(a). A lessee may designate a person to make payments on its behalf. To do so, FOGRMA requires the lessee to ''notify the Secretary . . . in writing of such designation.'' ONRR created form ONRR–4425, Designation Form for Royalty Payment Responsibility, to request the information necessary for a lessee to comply with FOGRMA's requirement to designate a designee. ONRR requires this information to ensure proper mineral revenue collection.

(3) Tribal Permission for Recoupment on Indian Oil and Gas Leases: A lessee may recoup overpayments on Tribal Indian leases against royalties or other revenues owed in a month on other leases where that Tribe is the lessor. To do so, lessees must comply with § 12l8.53(b), which requires a lessee to receive a Tribe's written permission to recoup overpayments on one lease against another lease where that Tribe is the lessor. The payor must provide ONRR with a copy of the Tribe's written permission.

Title: Collection of Monies Due the Federal Government.

OMB Control Number: 1012–0008.

Bureau Form Number: Form ONRR–4425.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federal and Indian lessees.

Total Estimated Number of Annual Respondents: 35.

Total Estimated Number of Annual Responses: 35.

Estimated Completion Time per Response: 1.68 hrs.

Total Estimated Number of Annual Burden Hours: 59 hours.

Respondent's Obligation: Mandatory.

Frequency of Collection: Occasion.

Total Estimated Annual Nonhour Burden Cost: We have identified no ''non-hour cost'' burden associated with this collection of information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kimbra G. Davis,

Director, Office of Natural Resources Revenue.

[FR Doc. 2020–12182 Filed 6–4–20; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–646 and 731–TA–1502–1516 (Preliminary)]

Prestressed Concrete Steel Wire Strand From Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of prestressed concrete steel wire strand (''PC strand'') from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates (''UAE'') provided for in subheading 7312.10.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the government of Turkey.[2]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] *Prestressed Concrete Steel Wire Strand From Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, the Netherlands, Saudi Arabia, South*

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On April 16, 2020, Insteel Wire Products Company, Mount Airy, North Carolina, Sumiden Wire Products Corporation, Dickson, Tennessee, and Wire Mesh Corporation, Houston, Texas, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of PC strand from Turkey and LTFV imports of PC strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and UAE. Accordingly, effective April 16, 2020, the Commission instituted countervailing duty investigation No. 701–TA–646 and antidumping duty investigation Nos. 731–TA–1502–1516 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 23, 2020 (85 FR 22751). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written questions, submissions of opening remarks and written testimony, written responses to questions, and postconference briefs. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on June 1, 2020. The views of the Commission are contained in USITC Publication 5062 (June 2020), entitled *Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, Indonesia, Italy, Malaysia, Netherlands, Saudi Arabia, South Africa, Spain, Taiwan, Tunisia, Turkey, Ukraine, and United Arab Emirates: Investigation Nos. 701–TA–646 and 731–TA–1502–1516 (Preliminary).*

By order of the Commission.

Issued: June 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–12153 Filed 6–4–20; 8:45 am]

BILLING CODE 7020–02–P

Africa, Spain, Taiwan, Tunisia, the Republic of Turkey, Ukraine, and the United Arab Emirates: Initiation of Less-Than-Fair-Value Investigations; 85 FR 28605 (May 13, 2020), and *Prestressed Concrete Steel Wire Strand From the Republic of Turkey: Initiation of Countervailing Duty Investigation;* 85 FR 28610 (May 13, 2020).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1138]

Certain LTE- and 3G-Compliant Cellular Communications Devices; Commission Determination To Review in Part a Final Initial Determination Finding No Violation of Section 337 and, on Review, To Affirm the Final Initial Determination's Finding of No Violation; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on February 18, 2020, the presiding administrative law judge (''ALJ'') issued a final initial determination (''ID'') finding no violation of section 337 in the above-captioned investigation. The Commission has determined to review the ID in part and, on review, has determined to affirm the final ID's finding of no violation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 19, 2018, based on a complaint filed by INVT SPE LLC (''INVT'') of San Francisco, California. 83 *FR* 53105 (Oct. 19, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (''Section 337''), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LTE- and 3G-compliant cellular communications devices by reason of infringement of certain claims of U.S. Patent Nos. 7,339,949 (''the '949 patent''); 7,848,439 (''the '439 patent''); 6,760,590 (''the '590 patent''); 7,206,587 (''the '587 patent''); and 7,764,711 (''the '711 patent''). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named as respondents Apple Inc. (''Apple'') of Cupertino, California; HTC Corporation of Taoyuan City, Taiwan; HTC America, Inc. of Seattle, Washington; ZTE Corporation of Guangdong, China; and ZTE (USA) Inc. of Richardson, Texas (collectively, the ''Respondents''). *Id.* at 53106. The Office of Unfair Import Investigations (''OUII'') is also named as a party. *Id.*

The Commission later terminated the investigation as to: (1) The '711 patent, Order No. 20 (Mar. 11, 2019), *unreviewed by* Comm'n Notice (Mar. 25, 2019); and (2) the '949 patent and claim 3 of the '439 patent, Order No. 46 (July 31, 2019), *unreviewed by* Comm'n Notice (Aug. 20, 2019). Remaining in the investigation are claims 3 and 4 of the 055A;590 patent, claim 4 of the 055A;587 patent, and claims 1 and 2 of the 055A;439 patent.

On February 18, 2020, the ALJ issued the final ID finding no violation of

Section 337. *See* ID. On March 2, 2020, INVT and OUII each filed petitions for review of certain findings in the ID and Respondents filed a contingent petition for review. On March 17, 2020, the parties filed responses to each other's petitions.

On April 3, 2020, the ALJ issued a Recommended Determination on the Public Interest, Remedy, and Bond (''RD'') recommending that, should the Commission reverse her findings in the ID and find a violation of Section 337, then the Commission should issue a limited exclusion order, with a delayed implementation, and cease and desist orders against each Respondent. RD at 3. The RD also recommends imposing no bond during the period of Presidential review. *Id.*

On April 8, 2020, Apple filed a motion for sanctions against INVT (''Apple Motion''). On April 20, 2020, INVT filed an opposition to the motion. On April 29, 2020, Apple filed a motion for leave to file a reply in support of its motion.

On May 4, 2020, the Commission received a submission on the public interest from INVT. On May 5, 2020, the Commission received submissions on the public interest from the following non-parties: (1) ACT/The App Association; (2) Cisco Systems, Inc., Dell Technologies, Inc., Hewlett Packard Enterprise Company, HP Inc., and the High Tech Inventors Alliance; and (3) Computer & Communications Industry Association. On May 6, 2020, the Commission also received a submission on the public interest from non-party Fair Standards Alliance.

Having reviewed the record in this investigation, including the ALJ's orders and ID, as well as the parties' petitions and responses thereto, the Commission has determined to review the ID in part, as follows:

The Commission has determined to review and, on review, take no position on the ID's findings regarding the following issues: (1) Whether INVT has standing before the Commission to assert the '590, '587, and '439 patents; (2) whether INVT satisfied the economic prong of the domestic industry requirement; and (3) whether Respondents' affirmative defenses of (i) patent exhaustion, (ii) equitable estoppel and waiver, and (iii) unclean hands bar the requested relief.

The Commission has determined not to review the remaining findings in the final ID.

Accordingly, the Commission has determined to affirm the final ID's finding of no violation of section 337. The investigation is terminated.

The Commission has also determined to deny Apple's motion for sanctions because the information at issue was not disclosed to unauthorized persons nor was it placed on the public record. *See* Apple Motion, Exh. 13.

The Commission vote for these determinations took place on June 1, 2020.

The authority for the Commission's determination is contained in Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: June 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–12152 Filed 6–4–20; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Chemical Mechanical Planarization Slurries and Components Thereof, DN 3457;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov* . The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Cabot Microelectronics Corporation on June 1, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain chemical mechanical planarization slurries and components thereof. The complaint names as respondents: DuPont de Nemours, Inc. of Wilmington, DE; Rohm and Haas Electronic Materials of Newark, DE; Rohm and Haas Electronic Materials CMP Asia Inc. (d/b/a Rohm and Haas Electronic Materials CMP Asia Inc., Taiwan Branch (U.S.A.)) of Taiwan; Rohm and Haas Electronic Materials Asia-Pacific Co., Ltd. of Taiwan; Rohm and Haas Electronic Materials K.K. of Japan; and Rohm and Haas Electronic Materials LLC of Marlborough, MA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3457'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 1, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–12151 Filed 6–4–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–659]

Bulk Manufacturer of Controlled Substances Application: Sigma Aldrich Research Biochemicals, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 4, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on May 4, 2020, Sigma Aldrich Research Biochemicals, Inc., 400–600 Summit Drive, Burlington, Massachusetts 01803, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance:

Controlled substance	Drug code	Schedule
JWH–018 (also known as AM678) 7118 I N 1-Pentyl-3-(1-naphthoyl)indole.	7118	I

The company plans to manufacture small quantities of the listed controlled substance to make reference standards for distribution to its customers.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–12180 Filed 6–4–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–655]

Bulk Manufacturer of Controlled Substances Application: Chemtos, LLC

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 4, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on May 7, 2020, Chemtos, LLC, 16713 Picadilly Court, Round Rock, Texas 78664–8544, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3–FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Controlled substance	Drug code	Schedule
4-Fluoro-N-methylcathinone (4–FMC)	1238	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4–MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR–18 (Also known as RCS–8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
ADB–FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5–Fluoro–UR–144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl] (2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB–FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
FUB–144 (1-(4-fluorobenzyl)-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl)methanone)	7014	I
JWH–019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB–FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
FUB–AMB, MMB–FUBINACA, AMB–FUBINACA (2-(1-(4-fluorobenzyl)-1Hindazole-3-carboxamido)-3-methylbutanoate).	7021	I
AB–PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I
THJ–2201 [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone	7024	I
5F–AB–PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluropentyl)-1H-indazole-3-carboximide)	7025	I
AB–CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide	7031	I
MAB–CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F–AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F–ADB; 5F–MDMB–PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB–PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
5F–EDMB–PINACA (ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7036	I
5F–MDMB–PICA (methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7041	I
MDMB–CHMICA, MMB–CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate).	7042	I
MMB–CHMICA, AMB–CHMICA (methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate)	7044	I
FUB–AKB48, FUB–APINACA, AKB48 N-(4–FLUOROBENZYL) (N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboximide).	7047	I
APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide	7048	I
5F–APINACA, 5F–AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7049	I
JWH–081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
5F–CUMYL–PINACA, 5GT–25 (1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide)	7083	I
5F–CUMYL–P7AICA (1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide)	7085	I
4–CN–CUML–BUTINACA, 4–cyano–CUMYL–BUTINACA, 4–CN–CUMYL BINACA, CUMYL–4CN–BINACA, SGT–78 (1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide).	7089	I
SR–19 (Also known as RCS–4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole	7104	I
JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH–122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR–144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I
JWH–073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH–203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate	7221	I
PB–22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F–PB–22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
4–MEAP (4-Methyl-alpha-ethylaminopentiophenone)	7245	I
N-Ethylhexedrone	7246	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
CP–47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP–47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7)	7348	I
Marihuana Extract	7350	I
Marihuana	7360	I
Parahexyl	7374	I
Mescaline	7381	I
2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C–T–2)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I

Controlled substance	Drug code	Schedule
JWH–398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
4′-Chloro-alpha-pyrrolidinovalerophenone	7443	I
MPHP, 4′-Methyl-alpha-pyrrolidinohexiophenone	7446	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	7473	I
N-Ethyl-3-piperidyl benzilate	7482	I
N-Methyl-3-piperidyl benzilate	7484	I
N-Benzylpiperazine	7493	I
4-Methyl-alphapyrrolidinopropiophenone (4–MePPP)	7498	I
2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C–D)	7508	I
2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C–E)	7509	I
2-(2,5-Dimethoxyphenyl) ethanamine (2C–H)	7517	I
2-(4-iodo-2,5-dimethoxyphenyl) ethanamine (2C–I)	7518	I
2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C–C)	7519	I
2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C–N)	7521	I
2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C–P)	7524	I
2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C–T–4)	7532	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I
2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B–NBOMe)	7536	I
2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C–NBOMe)	7537	I
2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I–NBOMe)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
N-Ethypentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one)	7543	I
α-PHP, alpha-Pyrrolidinohexanophenone	7544	I
alpha-pyrrolidinopentiophenone (α-PVP)	7545	I
alpha-pyrrolidinobutiophenone (α-PBP)	7546	I
alpha-pyrrolidinoheptaphenone (PV8)	7548	I
AM–694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I
Acetyldihydrocodeine	9051	I
Benzylmorphine	9052	I
Codeine-N-oxide	9053	I
Cyprenorphine	9054	I
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Heroin	9200	I
Hydromorphinol	9301	I
Methyldesorphine	9302	I
Methyldihydromorphine	9304	I
Morphine methylbromide	9305	I
Morphine methylsulfonate	9306	I
Morphine-N-oxide	9307	I
Myrophine	9308	I
Nicocodeine	9309	I
Nicomorphine	9312	I
Normorphine	9313	I
Pholcodine	9314	I
Thebacon	9315	I
Acetorphine	9319	I
Drotebanol	9335	I
U–47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I
AH–7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	I
MT–45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine))	9560	I

Controlled substance	Drug code	Schedule
Acetylmethadol	9601	I
Allylprodine	9602	I
Alphacetylmethadol except levo-alphacetylmethadol	9603	I
Alphameprodine	9604	I
Alphamethadol	9605	I
Benzethidine	9606	I
Betacetylmethadol	9607	I
Betameprodine	9608	I
Betamethadol	9609	I
Betaprodine	9611	I
Clonitazene	9612	I
Dextromoramide	9613	I
Diampromide	9615	I
Diethylthiambutene	9616	I
Dimenoxadol	9617	I
Dimepheptanol	9618	I
Dimethylthiambutene	9619	I
Dioxaphetyl butyrate	9621	I
Dipipanone	9622	I
Ethylmethylthiambutene	9623	I
Etonitazene	9624	I
Etoxeridine	9625	I
Furethidine	9626	I
Hydroxypethidine	9627	I
Ketobemidone	9628	I
Levomoramide	9629	I
Levophenacylmorphan	9631	I
Morpheridine	9632	I
Noracymethadol	9633	I
Norlevorphanol	9634	I
Normethadone	9635	I
Norpipanone	9636	I
Phenadoxone	9637	I
Phenampromide	9638	I
Phenoperidine	9641	I
Piritramide	9642	I
Proheptazine	9643	I
Properidine	9644	I
Racemoramide	9645	I
Trimeperidine	9646	I
Phenomorphan	9647	I
Propiram	9649	I
1-Methyl-4-phenyl-4-propionoxypiperidine	9661	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine	9663	I
Tilidine	9750	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide	9816	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
Para-fluorobutyryl fentanyl	9823	I
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9824	I
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide	9825	I
Para-chloroisobutyryl fentanyl	9826	I
Isobutyryl fentanyl	9827	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
Para-methoxybutyryl fentanyl	9837	I
Para-methoxybutyryl fentanyl	9838	I
Valeryl fentanyl	9840	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide	9843	I
Cyclopropyl Fentanyl	9845	I
Cyclopentyl Fentanyl	9847	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h)	9850	I
Amphetamine	1100	II
Methamphetamine	1105	II

Controlled substance	Drug code	Schedule
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
Nabilone	7379	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
4-Anilino-N-phenethyl-4-piperidine (ANPP)	8333	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Alphaprodine	9010	II
Anileridine	9020	II
Cocaine	9041	II
Codeine	9050	II
Etorphine HCl	9059	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Hydrocodone	9193	II
Levomethorphan	9210	II
Levorphanol	9220	II
Isomethadone	9226	II
Meperidine	9230	II
Meperidine intermediate-A	9232	II
Meperidine intermediate-B	9233	II
Meperidine intermediate-C	9234	II
Metazocine	9240	II
Methadone	9250	II
Methadone intermediate	9254	II
Metopon	9260	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Dihydroetorphine	9334	II
Levo-alphacetylmethadol	9648	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Phenazocine	9715	II
Thiafentanil	9729	II
Piminodine	9730	II
Racemethorphan	9732	II
Racemorphan	9733	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Bezitramide	9800	II
Fentanyl	9801	II
Moramide-intermediate	9802	II

The company plans to manufacture small quantities of the listed controlled substances in bulk for distribution to its customers.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–12177 Filed 6–4–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–657]

Bulk Manufacturer of Controlled Substances Application: Nalas Engineering Services, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before August 4, 2020.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on May 22, 2020, Nalas Engineering Services, Inc., 85 Westbrook Road, Centerbrook, Connecticut 06409, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance:

Controlled substance	Drug code	Schedule
Thebaine	9333	II

The company plans to manufacture derivatives of the above controlled substance for distribution to its customers.

William T. McDermott,

Assistant Administrator.

[FR Doc. 2020–12175 Filed 6–4–20; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1777]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention announces its next meeting.

DATES: Wednesday July 8th, 2020 at 10:00 a.m. ET.

ADDRESSES: The meeting will take place in the third floor main conference room at the U.S. Department of Justice, Office of Justice Programs, 810 7th St. NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Visit the website for the Coordinating Council at *www.juvenilecouncil.gov* or or contact Elizabeth Wolfe, Designated Federal Official (DFO), OJJDP, by telephone at (202) 598–9310, email at *elizabeth.wolfe@ojp.usdoj.gov;* or Melissa Kanaya, Project Manager/Federal Contractor, by telephone (202) 280–8874, email at *Melissa.kanaya@bixal.com,* or fax at (866) 854–6619. Please note that the above phone/fax numbers are not toll free.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention (''Council''), established by statute in the Juvenile and Delinquency Prevention Act of 1974 section 206(a) (42 U.S.C. 5616(a)), will meet to carry out its advisory functions. Information regarding this meeting will be available on the Council's web page at *www.juvenilecouncil.gov.* The meeting is open to the public, and available via online video conference, but prior registration is required (see below). In addition, meeting documents will be viewable via this website including meeting announcements, agendas, minutes and reports.

Although designated agency representatives may attend in lieu of members, the Council's formal membership consists of the following secretaries and/or agency officials; Attorney General (Chair), Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), Secretary of Health and Human Services (HHS), Secretary of Labor (DOL), Secretary of Education (DOE), Secretary of Housing and Urban Development (HUD), Director of the Office of National Drug Control Policy, Chief Executive Officer of the Corporation for National and Community Service and the Assistant Secretary of Homeland Security for the U.S. Immigration and Customs Enforcement. Nine additional members are appointed by the Speaker of the U.S. House of Representatives, the U.S. Senate Majority Leader and the President of the United States. Further agencies that take part in Council activities include, the Departments of Agriculture, Defense, Interior and the Substance and Mental Health Services Administration of HHS.

Council meeting agendas are available on *www.juvenilecouncil.gov.* Agendas will generally include: (a) Opening remarks and introductions; (b) Presentations and discussion of agency work; and (c) Council member announcements.

For security purposes and because space is limited, members of the public who wish to attend must register in advance of the meeting online at the meeting registration site, no later than Thursday, July 2, 2020. Should issues arise with online registration, or to register by fax or email, the public should contact Melissa Kanaya, Project Manager/Federal Contractor (see above for contact information). If submitting registrations via fax or email, attendees should include all of the following: Name, Title, Organization/Affiliation, Full Address, Phone Number, Fax and Email. The meeting will also be available to join online via Webex, a video conferencing platform. Registration for this is also found online at *www.juvenilecouncil.gov.*

Note: Photo identification will be required to attend the meeting at the OJP 810 7th Street Building.

Interested parties may submit written comments and questions in advance to Elizabeth Wolfe (DFO) for the Council, at the contact information above. If faxing, please follow up with Melissa Kanaya, Project Manager/Federal Contractor (contact information above) in order to assure receipt of submissions. All comments and questions should be submitted no later than 5:00 p.m. ET on Thursday July 2nd, 2020.

The Council will limit public statements if they are found to be duplicative. Written questions submitted by the public while in attendance will also be considered by the Council.

Elizabeth Wolfe,

Training and Outreach Coordinator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2020–12138 Filed 6–4–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension without change of a currently approved collection for the ''Producer Price Index'' survey. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before August 4, 2020.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Producer Price Index (PPI), one of the Nation's leading economic indicators, designated as a Principal Federal Economic Indicator. The PPI consists of a family of indexes that measures the average change over time in the selling prices received by domestic producers of goods and services. About 10,000 PPIs for individual products and groups of products are released each month. PPIs are available for the output of nearly all industries in the goods-producing sectors of the U.S. economy—mining, manufacturing, agriculture, fishing, and forestry—as well as natural gas, electricity, construction, and goods competitive with those made in the producing sectors, such as waste and scrap materials. The PPI data are widely used by the business community as well as by government. In particular the data are used as an economic indicator playing a crucial role in market analysis, as a deflator of other economic series, the basis for the calculation of price adjustments for contracts and purchase agreements and as an input to economic research. These uses highlight the necessity of the PPI in order to understand the economy.

PPI data meets a wide range of government needs by providing a description of the magnitude and composition of price changes within the economy. Government agencies view these indexes as sensitive indicators of the economic environment and closely follow each monthly release of statistics. PPI data are vital in helping the President and Congress set fiscal spending targets. The Federal Reserve Board Open Market Committee monitors producer prices to help determine monetary policy. Federal policy makers at the Department of the Treasury and the Council of Economic Advisors utilize these statistics to help interpret the economic environment and make decisions based upon these interpretations. Many dollar-denominated measurements of economic performance, such as the Gross Domestic Product (GDP), require accurate price data for the conversion of nominal dollars into real dollars. National income accounting figures must also be inflation free in order to remain relevant to fiscal and monetary policy makers setting objectives. Price adjustment clauses in government purchasing contracts commonly use one or more PPIs. According to a conservative estimate hundreds-of-billions of dollars' worth of contracts and purchase agreements employ PPIs as part of price adjustment clauses. Failure to calculate these price data would prolong the time frame needed for accurate recognition of and appropriate adaptation to economic events.

The private sector also makes extensive use of PPI data. Researchers commonly use producer prices to probe and measure the interaction of market forces. Private firms use PPIs for contract escalation and price adjustment. The Internal Revenue Service (IRS) recommends using PPI data for certain kinds of tax related inventory accounting, such as Last-In-First-Out (LIFO). Private businesses extensively use PPIs for planning and operations. Firms often compare the prices they pay and receive with changes in appropriate PPIs.

Economic researchers and forecasters also put PPIs to regular use. They use PPI data to better understand market forces. Research topics requiring producer price data include studying elasticities, potential lead and lag structures within price changes, and the identification of prices that demonstrate tremendous influence throughout the economy if they change. Policy-makers, businesses, and researchers all require complete descriptions of price change trends if they are to perform effectively and efficiently.

The expansive coverage of PPIs makes it very valuable to the users described above as well as many others.

II. Current Action

Office of Management and Budget clearance is being sought for the extension of the PPI survey.

The PPI collection is not a one-time project with an end date. The purpose of the PPI collection is to accumulate data for the ongoing, monthly publication of the PPI family of indexes. The Bureau of Labor Statistics must continue collecting data for the PPI since both policy and business planning benefit from accurate, timely, and relevant description of price trends. Legislators and government agencies use the PPI to assist them with developing policy and evaluating the markets. Dollar-denominated measures of economic performance, such as Gross Domestic Product, require accurate price data in order to convert nominal to constant-dollar values. Inflation-free national income accounting figures are vital to fiscal and monetary policy-makers when setting objectives and targets. The price adjustment clauses of purchase agreements use monthly PPIs. It is conservatively estimated that hundreds-of-billions of dollars' worth of contracts and purchase agreements employ PPIs as part of price-adjustment clauses. Failure to provide current accurate monthly statistics would necessitate more complex clauses in contracts and prolong the time required to determine price changes for purposes of contract adjustments.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: Producer Price Index Survey.

OMB Number: 1220–0008.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private Sector.

Form	Total respondents	Frequency	Total responses (per year)	Average time per response (minutes)	Estimated total burden (hours)
BLS 1810A, A1, B, C, C1, and E	4,305	once	4,305	120	8,610
	Subset of 4,305 initiation respondents. (Approximately 8%).	once	340	15	85
BLS IDCF	11,640	monthly	735,000	5	61,250
Totals	15,945		739,645		69,945

* For monthly repricing, PPI requests repricing of 61,250 items each month.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 2nd day of June 2020.

Mark Staniorski,

Chief, Division of Management Systems.

[FR Doc. 2020–12199 Filed 6–4–20; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–20–0014; NARA–2020–044]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by July 20, 2020.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many

of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Health and Human Services, Office of the Secretary, Correspondence of Assistant Secretary for Preparedness and Response (DAA–0468–2019–0004).
2. Department of Homeland Security, Transportation Security Administration, Common Use Records (DAA–0560–2017–0022).
3. Department of Homeland Security, U.S. Citizenship and Immigration Services, Absconders Data Collection Systems (DAA–0566–2020–0001).
4. Department of Homeland Security, U.S. Coast Guard, Records of the Differential GPS (DAA–0026–2020–0001).
5. Department of State, Bureau of Diplomatic Security, Consolidated Schedule (DAA–0059–2018–0003).
6. Federal Retirement Thrift Investment Board, Office of General Counsel, General Counsel Records (DAA–0474–2018–0009).
7. Securities and Exchange Commission, Office of the Advocate for Small Business Capital Formation, Small Business Capital Formation Advisory Committee Records (DAA–0266–2019–0004).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2020–12110 Filed 6–4–20; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 200th Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the National Council on the Arts will be held open to the public by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting time and date. The meeting is Eastern time and the ending time is approximate.

ADDRESSES: The National Endowment for the Arts, Constitution Center, 400 Seventh Street SW, Washington, DC 20560. This meeting will be held by teleconference. Please see *arts.gov* for the most up-to-date information.

FOR FURTHER INFORMATION CONTACT: Victoria Hutter, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the September 10, 2019 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, to Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact Beth Bienvenu, Office of Accessibility, National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202/682–5496, at least seven (7) days prior to the meeting.

The upcoming meeting is:

National Council on the Arts 200th Meeting

This meeting will be held by teleconference.

Date and time: June 25, 2020; 3:00 p.m. to 3:30 p.m.

There will be opening remarks and voting on recommendations for grant funding and rejection, followed by updates from the NEA Chairman.

Dated: June 2, 2020.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2020–12246 Filed 6–4–20; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of June 8, 15, 22, 29, July 6, 13, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of June 8, 2020

There are no meetings scheduled for the week of June 8, 2020.

Week of June 15, 2020—Tentative

There are no meetings scheduled for the week of June 15, 2020.

Week of June 22, 2020—Tentative

There are no meetings scheduled for the week of June 22, 2020.

Week of June 29, 2020—Tentative

There are no meetings scheduled for the week of June 29, 2020.

Week of July 6, 2020—Tentative

There are no meetings scheduled for the week of July 6, 2020.

Week of July 13, 2020—Tentative

There are no meetings scheduled for the week of July 13, 2020.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–

415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: June 3, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–12373 Filed 6–3–20; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0001]

Sunshine Act Meetings

TIME AND DATE: Week of June 1, 2020.

PLACE: via Teleconference.

STATUS: Open.

Week of June 1, 2020

Thursday, June 4, 2020

2:30 p.m. Affirmation Session (Public Meeting via Teleconference) (Tentative) Entergy Nuclear Operations, Inc., Entergy Nuclear Generation Co., Holtec International, and Holtec Decommissioning International, LLC (Pilgrim Nuclear Power Station)—Petitions for Intervention (Tentative) (Contact: Denise McGovern: 301–415–0681)

Additional Information: By a vote of 4–0 on June 2, 2020, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on June 4, 2020, and will be held via teleconference. Details for joining the teleconference in listen only mode can be found at *https://www.nrc.gov/pmns/mtg.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: June 3, 2020.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2020–12314 Filed 6–3–20; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–147 and CP2020–158]

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:* June 9, 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
II. Docketed Proceeding(s)

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 3011.301.[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 3030, and 39 CFR part 3040, 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 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–147 and CP2020–158; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 5 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 1, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 *et seq.,* and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 9, 2020.

[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).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–12209 Filed 6–4–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88986; File No. SR–MSRB–2020–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Waive MSRB Market Activity Fees Related to Transactions With the Municipal Liquidity Facility Established by the Board of Governors of the Federal Reserve System

June 1, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2020 the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of a proposed amendment to MSRB Rule A–13 regarding underwriting and transaction assessments for brokers, dealers and municipal securities dealers (collectively ''dealers'') to waive certain underwriting, transaction and technology assessments (''market activity fees'') related to transactions with the Municipal Liquidity Facility (''Facility'' or ''MLF'') established by the Board of Governors of the Federal Reserve System (''Federal Reserve'') (the ''proposed rule change'') as described below. The MSRB has designated the proposed rule change as ''establishing or changing a due, fee, or other charge'' under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) [4] thereunder, which renders the proposal effective upon filing with the Commission.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2020-Filings.aspx,* at the MSRB's principal office, 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 MSRB 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 MSRB 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 MSRB is closely monitoring the impact of the coronavirus disease (''COVID–19'') pandemic on the municipal market and municipal market participants, including issuers, investors, dealers and municipal advisors.[5] The Federal Reserve, noting that ''[t]he municipal securities market is an important part of the financial system, which helps provide states, cities, and counties (and their political subdivisions and other governmental entities) with the funding needed to provide essential public services to their citizens,'' [6] established the MLF, which has been authorized under Section 13(3) of the Federal Reserve Act.[7] ''The immediate purpose of the MLF is to enhance the liquidity of the primary short-term municipal securities market through the purchase at issuance of Tax Anticipation Notes (''TANs''), Tax and Revenue Anticipation Notes (''TRANs''), Bond Anticipation Notes (''BANs''), and similar short-term notes'' (collectively, ''Eligible Notes'').[8]

The MSRB continues to monitor announcements by the Federal Reserve to understand how the Facility will operate in conjunction with MSRB rules.[9] The Facility intends to provide a liquidity backstop to certain issuers through a special purpose vehicle (''SPV''). The SPV may purchase certain Eligible Notes through a direct sale to the SPV or, if there is a competitive sale process, the SPV generally will not submit a bid in the competitive sale process, but instead may agree to purchase such municipal securities that are not awarded to other bidders.[10]

Based on the information currently available regarding the operation of the MLF, the MSRB believes that the MLF would be a customer for purposes of Rule A–13 and, therefore, the underwriting, transaction and technology assessments under Rule A–13 would be applicable to dealers' transactions with the MLF. The MSRB recognizes that dealers are experiencing operational challenges coupled with unprecedented conditions in the municipal market due to the COVID–19 pandemic.[11] The MSRB is proposing to waive these market activity fees for transactions conducted with the MLF. Specifically, the MSRB is proposing to provide a temporary waiver to dealers for the assessment of the:

- Underwriting fee in the amount .00275% ($.0275 per $1,000) of the par value pursuant to Rule A–13(c)(i) on the par amount of the primary offering that is purchased by or on behalf of the MLF;
- Transaction fee on sales to the MLF in the amount equal to .001% ($.01 per $1,000) of the total par value of sales to customers that it reports to the Board under MSRB Rule G–14(b), on reports of sales and purchases, pursuant to Rule A–13(d)(ii); and
- Technology fee of $1.00 per transaction for sales to the MLF that it reports to the Board under Rule G–14(b), pursuant to Rule A–13(d)(iv)(b).

The MSRB intends the waiver to be temporary and to expire at the same time as the MLF. The MLF is currently scheduled to cease purchasing Eligible Notes on December 31, 2020, unless the Federal Reserve Board of Governors and the Treasury Department extend the program.[12] The MSRB will waive the market activity fees assessed on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Wall Street Journal: How the Muni Market Became the Epicenter of the Liquidity Crisis (April 2, 2020) *https://www.wsj.com/articles/how-the-muni-market-became-the-epicenter-of-the-liquidity-crisis-11585823404.*

[6] Federal Reserve Bank of New York, FAQs: Municipal Liquidity Facility (''Fed FAQs'') *https://www.newyorkfed.org/markets/municipal-liquidity-facility/municipal-liquidity-facility-faq.*

[7] 12 U.S.C. 343 (1932).

[8] Fed FAQs.

[9] *See e.g.,* Federal Reserve Bank of New York, Term Sheet regarding the Facility (May 11, 2020) (''Fed Term Sheet'') *https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200511a1.pdf.*

[10] *See* Fed FAQs.

[11] *Supra* note 5.

[12] The Federal Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold. *See* Fed Term Sheet.

transactions with the MLF by issuing a credit for the amount of the applicable assessment. The amount of the fees to be waived will be displayed on a monthly statement as a credit against the gross billing and netted to indicate the amount due. Consistent with Rule A–13(e), the amount due is to be paid within 30 days of the sending of the invoice by the Board.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[13] which provides that the MSRB's rules shall:

> 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The MSRB believes that dealers' transactions with the MLF will serve to facilitate the smooth functioning of the municipal securities market during times of strain resulting from the COVID–19 pandemic. Providing a waiver of market activity fees resulting from such transactions will help to provide liquidity for the municipal market and serve to remove impediments to and perfect the mechanism of a free and open market in municipal securities without impacting the protection of investors, municipal entities, obligated persons, and the public interest.

The MSRB also believes that the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act[14] which requires, in pertinent part, that the MSRB's rules shall provide that each municipal securities broker, municipal securities dealer, and municipal advisor shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board and that such rules shall specify the amount of such fees and charges.

The MSRB recognizes that dealers are experiencing operational challenges coupled with unprecedented conditions in the municipal market due to the COVID–19 pandemic and believes this temporary waiver of certain market activity fees will provide some relief. The temporary waiver would be applicable to a limited number of transactions for a limited duration, consistent with the operation of the MLF.[15] The MSRB believes that the waiver would not materially alter the total amount of fees collected by the MSRB or negatively impact its long-term sustainability, thereby continuing to ensure that the MSRB is sufficiently capitalized to meet its regulatory responsibilities. Accordingly, the MSRB believes that the proposed waiver of certain assessments on a temporary basis is reasonable and appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act[16] requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The goal of the proposed rule change is to provide relief during the exigent circumstances of the COVID–19 pandemic. The relief will apply equally to all dealers and extend for the duration of the MLF.[17] Accordingly, the MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and paragraph (f) of Rule 19b–4 thereunder.[19] 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–MSRB–2020–03 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–MSRB–2020–03. 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 MSRB. 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–MSRB–2020–03 and should be submitted on or before June 26, 2020.

[13] 15 U.S.C. 78*o*–4(b)(2)(C).

[14] 15 U.S.C. 78*o*–4(b)(2)(J).

[15] *See* Fed Term Sheet.

[16] 15 U.S.C. 78*o*–4(b)(2)(C).

[17] Currently, the MLF is planning to only purchase Eligible Notes until December 31, 2020. *See* Fed Term Sheet.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

For the Commission, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12167 Filed 6–4–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88979; File No. SR–NYSEAMER–2020–40]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE American Equities Price List and the NYSE American Options Fee Schedule Related to Co-Location Services

June 1, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 18, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Equities Price List and the NYSE American Options Fee Schedule (together, the ''Price List and Fee Schedule'') related to co-location services with respect to connectivity to the ICE Data Global Index and to waive any change fees that a User would otherwise incur as a result of the proposed change. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List and Fee Schedule related to co-location[4] services offered by the Exchange with respect to connectivity to the ICE Data Global Index (''GIF'') and to waive any change fees that a User would otherwise incur as a result of the proposed change.

Proposed Change

The Exchange offers Users[5] connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds'').[6] The list of Third Party Data Feeds is set forth in the Price List and Fee Schedule, and includes connectivity to the GIF for a monthly connectivity fee of $100.[7]

ICE, which publishes the GIF, announced to its customers that connect to the GIF that it will no longer offer the GIF as a stand-alone product. Accordingly, the Exchange proposes to cease offering connectivity to the GIF once it is no longer available. The Exchange has been informed by ICE that cessation is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice.

Users are subject to a change fee if they request a change to one or more existing co-location services.[8] The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

In order to implement the proposed change, the Exchange proposes to make the following changes to the section entitled ''Connectivity to Third Party Data Feeds'':

- In the first paragraph and in the table of Third Party Data Feeds, add an asterisk after ''ICE Data Global Index.''
- Following the table of Third Party Data Feeds, add the following text:

* ICE will cease to offer the GIF as a stand-alone product, which the Exchange has been informed by ICE is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice. Any change fees that a User would otherwise incur as a result of the proposed change will be waived.

The GIF includes the values of various indices and exchange traded product data.[9] Based on information published by ICE Data Services, all the data in the GIF was already available on the ICE Data Services Consolidated Feed (''Consolidated Feed'').[10] The Exchange offers connectivity to the Consolidated Feed, and does not propose to change

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates a data center in Mahwah, New Jersey (the ''data center''), from which the Exchange provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–46, SR–NYSEArca–2020–49, SR–NYSECHX–2020–17, and SR–NYSENAT–2020–19.

[6] *See* Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63) (notice of filing of Partial Amendment No. 4 and order granting accelerated approval of a proposed rule change, as modified by Amendment Nos. 1 through 4, to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

[7] The Exchange has an indirect interest in the GIF because ICE is the Exchange's ultimate parent. *See id.,* at 15733, and Securities Exchange Act Release No. 79672 (December 22, 2016), 81 FR 96080 (December 29, 2016) (SR–NYSEMKT–2016–63) (notice of filing of Amendments Nos. 2 and 3 to proposed rule change to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

[8] *See* Securities Exchange Act Release Nos. 67664 (August 15, 2012), 77 FR 50733 (August 22, 2012) (SR–NYSEMKT–2012–10) (order approving a proposed rule change amending the NYSE MKT Price List to provide for additional co-location services and establish related fees), and 67665 (August 15, 2012), 77 FR 50734 (August 22, 2012) (SR–NYSEMKT–2012–11) (order approving a proposed rule change amending the NYSE Amex Options Fee Schedule to provide for additional co-location services and establish related fees).

[9] The Exchange understands that some of the indices may include Exchange or Affiliate SRO data as underlying components, but the GIF does not include those underlying components or other information directly from the Exchange and Affiliate SROs.

[10] *See* ''Consolidated Data Feed Coverage List—Indices and Indicators'' at *https://www.theice.com/market-data/connectivity-and-feeds/consolidated-feed/coverage-list.*

the price for such connectivity. In addition, the Exchange's connectivity to the GIF and the Consolidated Feed should have approximately the same latency.

Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Price List and Fee Schedule are applied uniformly to all Users.

Currently, there are seven Users that have connectivity to the GIF, and so would be affected by the change. If any of them wish to continue having connectivity to the information in the GIF, they could connect to the Consolidated Feed, which none of them do presently. The monthly cost for connectivity to the Consolidated Feed depends on the size of the bandwidth utilized. If a User opts to connect to the Consolidated Feed to connect to the information in the GIF, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable and Equitable

The Exchange believes that the proposed rule change is reasonable and equitable for the following reasons.

The Exchange believes that it is reasonable and an equitable allocation of its fees and credits to add a note to its Price List and Fee Schedule stating that ICE will cease to offer the GIF as a stand-alone product, as the Exchange will no longer be able to offer the service once that occurs.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through IDS or from a third party provider. A User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that it is reasonable and equitable that it waive any change fees that a User would otherwise incur as a result of the proposed change, as Users would have no choice but to terminate connectivity to the GIF. The fee waiver would help to alleviate any burden related to the change.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer something that it cannot provide because the relevant feed has been discontinued. Adding the proposed note to its Price List and Fee Schedule would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: As a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF. The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

Adding the proposed note to the Price List and Fee Schedule would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

The Exchange believes that the proposed change is necessary and appropriate. Adding the proposed note to the Price List and Fee Schedule would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete and provide a timeline for the change.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that such waiver would be consistent with the protection of investors and the public interest because it would allow the Exchange to waive the change fee sooner. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would permit the Exchange, without undue delay, to cease offering the GIF when it becomes unavailable, provide notice to customers and waive the change fee. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[20]

At any time within 60 days of the filing of such proposed rule change, the

[14] 15 U.S.C. 78f(b)(8).

[15] *See* 70 FR 37496, *supra* note 11.

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–40 and should be submitted on or before June 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12156 Filed 6–4–20; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88985; File No. SR–NYSE–2020–46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Price List Related to Co-Location Services

June 1, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 18, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List related to co-location services with respect to connectivity to the ICE Data Global Index and to waive any change fees that a User would otherwise incur as a result of the proposed change. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location [4] services offered by the Exchange with respect to connectivity to the ICE Data Global Index (''GIF'') and to waive any change fees that a User would otherwise incur as a result of the proposed change.

Proposed Change

The Exchange offers Users [5] connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds'').[6] The list of Third Party Data Feeds is set

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates a data center in Mahwah, New Jersey (the ''data center''), from which the Exchange provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAmer–2020–40, SR–NYSEArca–2020–49, SR–NYSECHX–2020–17, and SR–NYSENAT–2020–19.

[6] *See* Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15741 (March 30, 2017) (SR–NYSE–2016–45) (notice of filing of Partial Amendment No. 4 and order granting accelerated approval of a proposed rule change, as modified by Amendment Nos. 1 through 4, to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

forth in the Price List, and includes connectivity to the GIF for a monthly connectivity fee of $100.[7]

ICE, which publishes the GIF, announced to its customers that connect to the GIF that it will no longer offer the GIF as a stand-alone product. Accordingly, the Exchange proposes to cease offering connectivity to the GIF once it is no longer available. The Exchange has been informed by ICE that cessation is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice.

Users are subject to a change fee if they request a change to one or more existing co-location services.[8] The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

In order to implement the proposed change, the Exchange proposes to make the following changes to the section entitled ''Connectivity to Third Party Data Feeds'':

• In the first paragraph and in the table of Third Party Data Feeds, add an asterisk after ''ICE Data Global Index.''

• Following the table of Third Party Data Feeds, add the following text:

* ICE will cease to offer the GIF as a stand-alone product, which the Exchange has been informed by ICE is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice. Any change fees that a User would otherwise incur as a result of the proposed change will be waived.

The GIF includes the values of various indices and exchange traded product data.[9] Based on information published by ICE Data Services, all the data in the GIF was already available on the ICE Data Services Consolidated Feed (''Consolidated Feed'').[10] The Exchange offers connectivity to the Consolidated Feed, and does not propose to change the price for such connectivity. In addition, the Exchange's connectivity to the GIF and the Consolidated Feed should have approximately the same latency.

Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Price List is applied uniformly to all Users.

Currently, there are seven Users that have connectivity to the GIF, and so would be affected by the change. If any of them wish to continue having connectivity to the information in the GIF, they could connect to the Consolidated Feed, which none of them do presently. The monthly cost for connectivity to the Consolidated Feed depends on the size of the bandwidth utilized. If a User opts to connect to the Consolidated Feed to connect to the information in the GIF, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change is Reasonable and Equitable

The Exchange believes that the proposed rule change is reasonable and equitable for the following reasons.

The Exchange believes that it is reasonable and an equitable allocation of its fees and credits to add a note to its Price List stating that ICE will cease to offer the GIF as a stand-alone product, as the Exchange will no longer be able to offer the service once that occurs.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through IDS or from a third party provider. A User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

[7] The Exchange has an indirect interest in the GIF because ICE is the Exchange's ultimate parent. *See id.,* at 15749, and Securities Exchange Act Release No. 79674 (December 22, 2016), 81 FR 96053 (December 29, 2016) (SR–NYSE–2016–45) (notice of filing of Amendment No. 3 to proposed rule change to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

[8] *See* Securities Exchange Act Release No. 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18) (order approving a proposed rule change amending the New York Stock Exchange Price List to provide for additional co-location services and establish related fees).

[9] The Exchange understands that some of the indices may include Exchange or Affiliate SRO data as underlying components, but the GIF does not include those underlying components or other information directly from the Exchange and Affiliate SROs.

[10] *See* ''Consolidated Data Feed Coverage List—Indices and Indicators'' at *https://www.theice.com/market-data/connectivity-and-feeds/consolidated-feed/coverage-list.*

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

The Exchange believes that it is reasonable and equitable that it waive any change fees that a User would otherwise incur as a result of the proposed change, as Users would have no choice but to terminate connectivity to the GIF. The fee waiver would help to alleviate any burden related to the change.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer something that it cannot provide because the relevant feed has been discontinued. Adding the proposed note to its Price List would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

The Proposed Change is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: As a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF. The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

Adding the proposed note to the Price List would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

The Exchange believes that the proposed change is necessary and appropriate. Adding the proposed note to the Price List would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete and provide a timeline for the change.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

[14] 15 U.S.C. 78f(b)(8).

[15] *See* 70 FR 37496, *supra* note 11.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that such waiver would be consistent with the protection of investors and the public interest because it would allow the Exchange to waive the change fee sooner. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would permit the Exchange, without undue delay, to cease offering the GIF when it becomes unavailable, provide notice to customers and waive the change fee. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–46 and should be submitted on or before June 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

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[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, June 10, 2020.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topic:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the

scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: June 3, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–12380 Filed 6–3–20; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88984; File No. SR–CBOE–2020–048]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule in Connection With Migration

June 1, 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 May 22, 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. 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 the Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule in connection with migration. 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://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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe C2 Exchange, Inc. (''C2''), acquired Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX'' or ''EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with Cboe Options, C2, EDGX, EDGA, and BZX, the ''Affiliated Exchanges''). The Cboe Affiliated Exchanges recently aligned certain system functionality, including with respect to connectivity, retaining only intended differences between the Affiliated Exchanges, in the context of a technology migration. The Exchange migrated its trading platform to the same system used by the Affiliated Exchanges, which the Exchange completed on October 7, 2019 (the ''migration''). As a result of this migration, the Exchange's pre-migration connectivity architecture was rendered obsolete, and as such, the Exchange now offers new functionality, including new logical connectivity, and therefore proposes to adopt corresponding fees.[3] In determining the proposed fee changes, the Exchange assessed the impact on market participants to ensure that the proposed fees would not create an undue financial burden on any market participants, including smaller market participants. While the Exchange has no way of predicting with certainty the impact of the proposed changes, the Exchange had anticipated its post-migration connectivity revenue[4] to be approximately 1.75% lower than connectivity revenue pre-migration.[5] In addition to providing a consistent technology offering across the Cboe Affiliated Exchanges, the migration also provided market participants a latency equalized infrastructure, improved system performance, and increased sustained order and quote per second capacity, as discussed more fully below. Accordingly, in connection with the migration and in order to more closely align the Exchange's fee structure with that of its Affiliated Exchanges, the Exchange intends to update and simplify its fee structure with respect to access and connectivity and adopt new access and connectivity fees.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As of October 7, 2019, market participants no longer have the ability to connect to the old Exchange architecture.

[4] Connectivity revenue post-migration includes revenue from physical port fees (other than for disaster recovery), Cboe Data Services Port Fee, logical port fees, Trading Permit Fees, Market-Maker EAP Appointment Unit fees, Tier Appointment Surcharges and Floor Broker Trading Surcharges, less the Floor Broker ADV discounts and discounts on BOE Bulk Ports via the Affiliate Volume Plan and the Market-Maker Access Credit program.

[5] For February 2020, the Exchange's connectivity revenue was approximately 2.5% higher than connectivity revenue pre-migration. For purposes of a fair comparison of the Exchange's initial projection of post-migration connectivity revenue to realized post-migration revenue connectivity, the Exchange excluded from the February 2020 calculation revenue from a Trading Permit Holder who became a Market-Maker post October 7, 2019, a Trading Permit Holder that grew it's footprint on the Exchange significantly, and revenue derived from incremental usage in light of the extreme volatility and volume experienced in February, as such circumstances were not otherwise anticipated or incorporated into the Exchange's original projection. As noted, the Exchange had no way of predicting with certainty the impact of the proposed changes, nor control over choices market participants ultimately decided to make. The Exchange notes connectivity revenue was higher than anticipated in part due to (1) a higher number of 10 Gb Physical Ports being maintained by TPHs than expected (although 34% of Trading Permit Holders maintained the same number of 10 Gb Physical and 44% reduced the amount of 10 Gb Physical Ports maintained), (2) a higher quantity of BOE/FIX Logical Ports being purchased than predicted, and (3) a significantly higher quantity of the optional Drop, GRP, Multicast PITCH/Top Spin Server Ports and Purge Ports being purchased than predicted. For April 2020, the Exchange's connectivity revenue was approximately 16.50% *less* than connectivity revenue pre-migration using the same calculation. The Exchange notes that due to the closure of its trading floor on March 16, 2020, it adopted a number of corresponding temporary pricing changes, including waiving floor Trading Permit fees. *See* Cboe Options Fees Schedule, as of May 1, 2020. The Exchange also notes that, where possible, the Exchange is including numerical examples and percentages, including with respect to revenue impact. In addition, the Exchange is providing data to the Commission in support of its arguments herein, which is consistent with the SEC Division of Trading and Markets (the ''Division'') issued fee filing guidance titled ''Staff Guidance on SRO Rule Filings Relating to Fees'' (''Guidance'') issued on May 21, 2029. The non-rulemaking Guidance covers all aspects of a fee filing, which the Exchange nonetheless has extensively addressed throughout this filing.

[6] The Exchange initially filed the proposed fee changes on October 1, 2019 (SR–CBOE–2019–077). On business date October 2, 2019, the Exchange withdrew that filing and submitted SR–CBOE–2019–082, *See* Securities Exchange Act Release No. 87304 (October 15, 2019), 84 FR 56240, (October 21, 2019) (''Original Filing''). On business date November 29, 2019, the Exchange withdrew the Original Filing and submitted SR–CBOE–2019–111,

Physical Connectivity

A physical port is utilized by a Trading Permit Holder (''TPH'') or non-TPH to connect to the Exchange at the data centers where the Exchange's servers are located. The Exchange currently assesses fees for Network Access Ports for these physical connections to the Exchange. Specifically, TPHs and non-TPHs can elect to connect to Cboe Options' trading system via either a 1 gigabit per second (''Gb'') Network Access Port or a 10 Gb Network Access Port. Pre-migration the Exchange assessed a monthly fee of $1,500 per port for 1 Gb Network Access Ports and a monthly fee of $5,000 per port for 10 Gb Network Access Ports for access to Cboe Options primary system. Through January 31, 2020, Cboe Options market participants will continue to have the ability to connect to Cboe Options' trading system via the current Network Access Ports. As of October 7, 2019, in connection with the migration, TPHs and non-TPHs may alternatively elect to connect to Cboe Options via new latency equalized Physical Ports.[7] The new Physical Ports similarly allow TPHs and non-TPHs the ability to connect to the Exchange at the data center where the Exchange's servers are located and TPHs and non-TPHs have the option to connect via 1 Gb or 10 Gb Physical Ports. As noted above, both the new 1 Gb and 10 Gb Physical Ports provide latency equalization, meaning that each market participant will be afforded the same latency for 1 Gb or 10 Gb Physical Ports in the primary data center to the Exchange's customer-facing switches regardless of location of the market participant's cage[8] in the primary data center relative to the Exchange's servers. Conversely, the legacy Network Access Ports are not latency equalized, meaning the location of a market participant's cage within the data center may affect latency. For example, in the legacy system, a cage located further from the Exchange's servers may experience higher latency than those located closer to the Exchange's servers.[9] As such, the proposed Physical Ports ensure all market participants connected to the Exchange via the new Physical Ports will receive the same respective latency for each port size and ensure that no market participant has a latency advantage over another market participant within the primary data center.[10] Additionally, the new infrastructure utilizes new and faster switches resulting in lower overall latency.

The Exchange proposes to assess the following fees for any physical port, regardless of whether the TPH or non-TPH connects via the current Network Access Ports or the new Physical Ports. Specifically, the Exchange proposes to continue to assess a monthly fee of $1,500 per port for 1 Gb Network Access Ports and new Physical Ports and increase the monthly fee for 10 Gb Network Access Ports and new Physical Ports to $7,000 per port. Physical port fees will be prorated based on the remaining trading days in the calendar month. The proposed fee for 10 Gb Physical Ports is in line with the amounts assessed by other exchanges for similar connections by its Affiliated Exchanges and other Exchanges that utilize the same connectivity infrastructure.[11]

In addition to the benefits resulting from the new Physical Ports providing latency equalization and new switches (*i.e.,* improved latency), TPHs and non-TPHs may be able to reduce their overall physical connectivity fees. Particularly, Network Access Port fees are assessed for unicast (orders, quotes) and multicast (market data) connectivity separately. More specifically, Network Access Ports may only receive one type of connectivity each (thus requiring a market participant to maintain two ports if that market participant desires both types of connectivity). The new Physical Ports however, allow access to both unicast and multicast connectivity with a single physical connection to the Exchange. Therefore, TPHs and non-TPHs that currently purchase two legacy Network Access Ports for the purpose of receiving each type of connectivity now have the option to purchase only one new Physical Port to accommodate their connectivity needs, which may result in reduced costs for physical connectivity.[12]

Cboe Data Services—Port Fees

The Exchange proposes to amend the ''Port Fee'' under the Cboe Data Services (''CDS'') Fees Schedule. Currently, the Port Fee is payable by any Customer[13] that receives data through two types of sources; a direct connection to CDS (''direct connection'') or through a connection to CDS provided by an extranet service provider (''extranet connection''). The Port Fee applies to receipt of any Cboe Options data feed but is only assessed once per data port. The Exchange proposes to amend the monthly CDS Port Fee to provide that it is payable ''per source'' used to receive

See Securities Exchange Act Release No. 87727 (December 12, 2019), 84 FR 69428, (December 18, 2019) (''Second Proposed Rule Change''). On January 28, 2020 the Exchange withdrew that filing and submitted SR–CBOE–2020–005, *See* Securities Exchange Act Release No. 88164 (February 11, 2020), 85 FR 8897, (February 18, 2020) (''Third Proposed Rule Change''). On March 27, 2020, the Exchange submitted SR–CBOE–2020–028, *See* Securities Exchange Act Release No. 88586 (April 8, 2020), 85 FR 20773, (April 14, 2020) (''Fourth Proposed Rule Change''). On May 21, 2020, the Exchange withdrew that filing and submitted this filing (''Fifth Proposed Rule Change''). The Exchange refiled the Fifth Proposed Rule Change on May 22, 2020 (SR–CBOE–2020–048) due to a technical error.

[7] As previously noted, market participants will continue to have the option of connecting to Cboe Options via a 1 Gbps or 10 Gbps Network Access Port at the same rates as proposed, respectively.

[8] A market participant's ''cage'' is the cage within the data center that contains a market participant's servers, switches and cabling.

[9] The Exchange equalizes physical connectivity in the data center for its primary system by taking the farthest possible distance that a Cboe market participant cage may exist from the Exchange's customer-facing switches and using that distance as the cable length for any cross-connect.

[10] The Exchange notes that 10 Gb Physical Ports have an 11 microsecond latency advantage over 1 Gb Physical Ports. Other than this difference, there are no other means to receive a latency advantage as compared to another market participant in the new connectivity structure.

[11] *See* Cboe EDGA U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe EDGX U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe BZX U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe BYX U.S. Equities Exchange Fee Schedule, Physical Connectivity Fees; Cboe EDGX Options Exchange Fee Schedule, Physical Connectivity Fees; and Cboe BZX Options Exchange Fee Schedule, Physical Connectivity Fees (collectively, ''Affiliated Exchange Fee Schedules''). *See e.g.,* Nasdaq PHLX and ISE Rules, General Equity and Options Rules, General 8. Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection. *See also* Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of $7,500 for each 10Gb direct connection to Nasdaq and $2,500 for each direct connection that supports up to 1Gb. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit.

[12] The Exchange proposes to eliminate the current Cboe Command Connectivity Charges table in its entirety and create and relocate such fees in a new table in the Fees Schedule that addresses fees for physical connectivity, including fees for the current Network Access Ports, the new Physical Ports and Disaster Recovery (''DR'') Ports. The Exchange notes that it is not proposing any changes with respect to DR Ports other than renaming the DR ports from ''Network Access Ports'' to ''Physical Ports'' to conform to the new Physical Port terminology. The Exchange also notes that subsequent to the initial filings that proposed these fee changes on October 1 and 2, 2019 (SR–CBOE–2019–077 and SR–CBOE–2019–082), the Exchange amended the proposed port fees to waive fees for ports used for PULSe in filing No. SR–CBOE–2019–105. The additions proposed by filing SR–CBOE–2019–105 are double underlined in Exhibit 5A and the deletions are doubled bracketed in Exhibit 5A.

[13] A Customer is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (*i.e.,* a Customer or extranet service provider), whether that data is distributed externally or used internally.

data, instead of ''per data port''. The Exchange also proposes to increase the fee from $500 per data port/month to $1,000 per data source/month.[14] The Exchange notes the proposed change in assessing the fee (*i.e.,* per source vs per port) and the proposed fee amount are the same as the corresponding fee on its affiliate C2.[15]

In connection with the proposed change, the Exchange also proposes to rename the ''Port Fee'' to ''Direct Data Access Fee''. As the fee will be payable ''per data source'' used to receive data, instead of ''per data port'', the Exchange believes the proposed name is more appropriate and that eliminating the term ''port'' from the fee will eliminate confusion as to how the fee is assessed.

Logical Connectivity

Next, the Exchange proposes to amend its login fees. By way of background, Cboe Options market participants were able to access Cboe Command via either a CMI or a FIX Port, depending on how their systems are configured. Effective October 7, 2019, market participants are no longer able to use CMI and FIX Login IDs. Rather, the Exchange utilizes a variety of logical connectivity ports as further described below. Both a legacy CMI/FIX Login ID and logical port represent a technical port established by the Exchange within the Exchange's trading system for the delivery and/or receipt of trading messages—*i.e.,* orders, accepts, cancels, transactions, etc. Market participants that wish to connect directly to the Exchange can request a number of different types of ports, including ports that support order entry, customizable purge functionality, or the receipt of market data. Market participants can also choose to connect indirectly through a number of different third-party providers, such as another broker-dealer or service bureau that the Exchange permits through specialized access to the Exchange's trading system and that may provide additional services or operate at a lower mutualized cost by providing access to multiple members. In light of the discontinuation of CMI and FIX Login IDs, the Exchange proposes to eliminate the fees associated with the CMI and FIX login IDs and adopt the below pricing for logical connectivity in its place.

Service	Cost per month
Logical Ports (BOE, FIX) 1 to 5	$750 per port.
Logical Ports (BOE, FIX) >5	$800 per port.
Logical Ports (Drop)	$750 per port.
BOE Bulk Ports 1 to 5	$1,500 per port.
BOE Bulk Ports 6 to 30	$2,500 per port.
BOE Bulk Ports >30	$3,000 per port.
Purge ports	$850 per port.
GRP Ports	$750/primary (A or C Feed).
Multicast PITCH/Top Spin Server Ports.	$750/set of primary (A or C feed).

The Exchange proposes to provide for each of the logical connectivity fees that new requests will be prorated for the first month of service. Cancellation requests are billed in full month increments as firms are required to pay for the service for the remainder of the month, unless the session is terminated within the first month of service. The Exchange notes that the proration policy is the same on its Affiliated Exchanges.[16]

Logical Ports (BOE, FIX, Drop): The new Logical Ports represent ports established by the Exchange within the Exchange's system for trading purposes. Each Logical Port established is specific to a TPH or non-TPH and grants that TPH or non-TPH the ability to operate a specific application, such as order/quote[17] entry (FIX and BOE Logical Ports) or drop copies (Drop Logical Ports). Similar to CMI and FIX Login IDs, each Logical Port will entitle a firm to submit message traffic of up to specified number of orders per second.[18] The Exchange proposes to assess $750 per port per month for all Drop Logical Ports and also assess $750 per port per month (which is the same amount currently assessed per CMI/FIX Login ID per month), for the first 5 FIX/BOE Logical Ports and thereafter assess $800 per port, per month for each additional FIX/BOE Logical Port. While the proposed ports will be assessed the same monthly fees as current CMI/FIX Login IDs (for the first five logical ports), the proposed logical ports provide for significantly more message traffic (and thus cost less per message sent) as shown below:

	CMI/FIX login Ids		BOE/FIX logical ports
	Quotes	Orders	Quotes/Orders
Bandwidth Limit per login	5,000 quotes/3 sec[19]	30 orders/sec	15,000 quotes/orders/3 sec.
Cost	$750 each	$750 each	$750/$800 each.
Cost per Quote/Order Sent @Limit	$0.15 per quote/3 sec	$25.00 per order/sec	$0.05/$0.053 per quote/order/3 sec.

Logical Port fees will be limited to Logical Ports in the Exchange's primary data center and no Logical Port fees will be assessed for redundant secondary data center ports. Each BOE or FIX Logical Port will incur the logical port fee indicated in the table above when used to enter up to 70,000 orders per trading day per logical port as measured on average in a single month. Each incremental usage of up to 70,000 per day per logical port will incur an additional logical port fee of $800 per month. Incremental usage will be determined on a monthly basis based on the average orders per day entered in a single month across all of a market participant's subscribed BOE and FIX

[14] For example, under the pre-migration ''per port'' methodology, if a TPH maintained 4 ports that receive market data, that TPH would be assessed $2,000 per month (*i.e.,* $500 × 4 ports), regardless of how many sources it used to receive data. Under the proposed ''per source'' methodology, if a TPH maintains 4 ports that receive market data, but receives data through only one source (*e.g.,* a direct connection) that TPH would be assessed $1,000 per month (*i.e.,* $1,000 × 1 source). If that TPH maintains 4 ports but receives data from both a direct connection and an extranet connection, that TPH would be assessed $2,000 per month (*i.e.,* $1,000 × 2 sources). Similarly, if that TPH maintains 4 ports and receives data from two separate extranet providers, that TPH would be assessed $2,000 per month (*i.e.,* $1,000 × 2).

[15] *See* Cboe C2 Options Exchange Fee Schedule, Cboe Data Services, LLC Fees, Section IV, Systems Fees.

[16] *See* Affiliated Exchange Fee Schedules, Logical Port Fees.

[17] As of October 7, 2019, the definition of quote in Cboe Options Rule 1.1 means a firm bid or offer a Market-Maker (a) submits electronically as an order or bulk message (including to update any bid or offer submitted in a previous order or bulk message) or (b) represents in open outcry on the trading floor.

[18] Login Ids restrict the maximum number of orders and quotes per second in the same way logical ports do, and Users may similarly have multiple logical ports as they may have Trading Permits and/or bandwidth packets to accommodate their order and quote entry needs.

[19] Each Login ID has a bandwidth limit of 80,000 quotes per 3 seconds. However, in order to place such bandwidth onto a single Login ID, a TPH or non-TPH would need to purchase a minimum of 15 Market-Maker Permits or Bandwidth Packets (each Market-Maker Permit and Bandwidth Packet provides 5,000 quotes/3 sec). For purposes of comparing ''quote'' bandwidth, the provided example assumes only 1 Market-Maker Permit or Bandwidth Packet has been purchased.

Logical Ports. The Exchange believes that the pricing implications of going beyond 70,000 orders per trading day per Logical Port encourage users to mitigate message traffic as necessary. The Exchange notes that the proposed fee of $750 per port is the same amount assessed not only for current CMI and FIX Login Ids, but also similar ports available on an affiliate exchange.[20]

The Exchange also proposes to provide that the fee for one FIX Logical Port connection to PULSe and one FIX Logical Port connection to Cboe Silexx will be waived per TPH. The Exchange notes that only one FIX Logical Port connection is required to support a firm's access through each of PULSe and Cboe Silexx FLEX.

BOE Bulk Logical Ports: The Exchange also offers BOE Bulk Logical Ports, which provide users with the ability to submit single and bulk order messages to enter, modify, or cancel orders designated as Post Only Orders with a Time-in-Force of Day or GTD with an expiration time on that trading day. While BOE Bulk Ports will be available to all market participants, the Exchange anticipates they will be used primarily by Market-Makers or firms that conduct similar business activity, as the primary purpose of the proposed bulk message functionality is to encourage market-maker quoting on exchanges. As indicated above, BOE Bulk Logical Ports are assessed $1,500 per port, per month for the first 5 BOE Bulk Logical Ports, assessed $2,500 per port, per month thereafter up to 30 ports and thereafter assessed $3,000 per port, per month for each additional BOE Bulk Logical Port. Like CMI and FIX Login IDs, and FIX/BOX Logical Ports, BOE Bulk Ports will also entitle a firm to submit message traffic of up to specified number of quotes/orders per second.[21] The proposed BOE Bulk ports also provide for significantly more message traffic (and thus cost less per message sent) as compared to current CMI/FIX Login IDs, as shown below:

CMI/FIX login Ids		BOE bulk ports
Quotes	Quotes [22]	
Bandwidth Limit	5,000 quotes/3 sec [23]	225,000 quotes 3 sec.
Cost	$750 each	$1,500/$2,500/$3,000 each.
Cost per Quote/Order Sent@ Limit	$0.15 per quote/3 sec	$0.006/$0.011/$0.013 per quote/3 sec.

Each BOE Bulk Logical Port will incur the logical port fee indicated in the table above when used to enter up to 30,000,000 orders per trading day per logical port as measured on average in a single month. Each incremental usage of up to 30,000,000 orders per day per BOE Bulk Logical Port will incur an additional logical port fee of $3,000 per month. Incremental usage will be determined on a monthly basis based on the average orders per day entered in a single month across all of a market participant's subscribed BOE Bulk Logical Ports. The Exchange believes that the pricing implications of going beyond 30,000,000 orders per trading day per BOE Bulk Logical Port encourage users to mitigate message traffic as necessary. The Exchange notes that the proposed BOE Bulk Logical Port fees are similar to the fees assessed for these ports by BZX Options.[24]

Purge Ports: As part of the migration, the Exchange introduced Purge Ports to provide TPHs additional risk management and open order control functionality. Purge ports were designed to assist TPHs, in the management of, and risk control over, their quotes, particularly if the TPH is dealing with a large number of options. Particularly, Purge Ports allow TPHs to submit a cancelation for all open orders, or a subset thereof, across multiple sessions under the same Executing Firm ID (''EFID''). This would allow TPHs to seamlessly avoid unintended executions, while continuing to evaluate the direction of the market. While Purge Ports are available to all market participants, the Exchange anticipates they will be used primarily by Market-Makers or firms that conduct similar business activity and are therefore exposed to a large amount of risk across a number of securities. The Exchange notes that market participants are also able to cancel orders through FIX/BOE Logical Ports and as such a dedicated Purge Port is not required nor necessary. Rather, Purge Ports were specially developed as an optional service to further assist firms in effectively managing risk. As indicated in the table above, the Exchange proposes to assess a monthly charge of $850 per Purge Port. The Exchange notes that the proposed fee is in line with the fee assessed by other exchanges, including its Affiliated Exchanges, for Purge Ports.[25]

Multicast PITCH/Top Spin Server and GRP Ports: In connection with the migration, the Exchange also offers optional Multicast PITCH/Top Spin Server (''Spin'') and GRP ports and proposes to assess $750 per month, per port. Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH/Top data feeds. The Exchange's Multicast PITCH/Top data feeds are available from two primary feeds, identified as the ''A feed'' and the ''C feed'', which contain the same information but differ only in the way such feeds are received. The Exchange also offers two redundant feeds, identified as the ''B feed'' and the ''D feed.'' All secondary feed Spin and GRP Ports will be provided for redundancy at no additional cost. The Exchange notes a dedicated Spin and GRP Port is not required nor necessary. Rather, Spin ports enable a market participant to receive a snapshot of the current book quickly in the middle of the trading session without worry of gap request limits and GRP Ports were specially developed to request and receive retransmission of data in the event of missed or dropped message. The

[20] *See* Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

[21] The Exchange notes that while technically there is no bandwidth limit per BOE Bulk Port, there may be possible performance degradation at 15,000 messages per second (which is the equivalent of 225,000 quotes/orders per 3 seconds). As such, the Exchange uses the number at which performance may be degraded for purposes of comparison.

[22] *See* Cboe Options Rule 1.1.

[23] Each Login ID has a bandwidth limit of 80,000 quotes per 3 seconds. However, in order to place such bandwidth onto a single Login ID, a TPH or non-TPH would need to purchase a minimum of 15 Market-Maker Permits or Bandwidth Packets (each Market-Maker Permit and Bandwidth Packet provides 5,000 quotes/3 sec). For purposes of comparing ''quote'' bandwidth, the provided example assumes only 1 Market-Maker Permit or Bandwidth Packet has been purchased.

[24] *See* Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

[25] *See e.g.,* Nasdaq ISE Options Pricing Schedule, Section 7(C), Ports and Other Services. *See also* Cboe EDGX Options Exchange Fee Schedule, Options Logical Port Fees; Cboe C2 Options Exchange Fee Schedule, Options Logical Port Fees and Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

Exchange notes that the proposed fee is in line with the fee assessed for the same ports on BZX Options.[26]

Access Credits

The Exchange next proposes to amend its Affiliate Volume Plan (''AVP'') to provide Market-Makers an opportunity to obtain credits on their monthly BOE Bulk Port Fees.[27] By way of background, under AVP, if a TPH Affiliate [28] or Appointed OFP [29] (collectively, an ''affiliate'') of a Market-Maker qualifies under the Volume Incentive Program (''VIP'') (*i.e.,* achieves VIP Tiers 2–5), that Market-Maker will also qualify for a discount on that Market-Maker's Liquidity Provider (''LP'') Sliding Scale transaction fees and Trading Permit fees. The Exchange proposes to amend AVP to provide that qualifying Market-Makers will receive a discount on Bulk Port fees (instead of Trading Permits) where an affiliate achieves VIP Tiers 4 or 5. As discussed more fully below, the Exchange is amending its Trading Permit structure, such that off-floor Market-Makers no longer need to hold more than one Market-Maker Trading Permit. As such, in place of credits for Trading Permits, the Exchange will provide credits for BOE Bulk Ports.[30] The proposed credits are as follows:

Market maker affiliate access credit	VIP tier	Percent credit on monthly BOE Bulk port fees
Credit Tier	1	0
	2	0
	3	0
	4	15
	5	25

The Exchange believes the proposed change to AVP continues to allow the Exchange to provide TPHs that have both Market-Maker and agency operations reduced Market-Maker costs via the credits, albeit credits on BOE Bulk Port fees instead of Trading Permit fees. AVP also continues to provide incremental incentives for TPHs to strive for the higher tier levels, which provide increasingly higher benefits for satisfying increasingly more stringent criteria.

In addition to the opportunity to receive credits via AVP, the Exchange proposes to provide an additional opportunity for Market-Makers to obtain credits on their monthly BOE Bulk Port fees based on the previous month's make rate percentage. By way of background, the Liquidity Provider Sliding Scale Adjustment Table provides that Taker fees be applied to electronic ''Taker'' volume and a Maker rebate be applied to electronic ''Maker'' volume, in addition to the transaction fees assessed under the Liquidity Provider Sliding Scale.[31] The amount of the Taker fee (or Maker rebate) is determined by the Liquidity Provider's percentage of volume from the previous month that was Maker (''Make Rate'').[32] Market-Makers are given a Performance Tier based on their Make Rate percentage which currently provides adjustments to transaction fees. Thus, the program is designed to attract liquidity from traditional Market-Makers. The Exchange proposes to now also provide BOE Bulk Port fee credits if Market-Makers satisfy the thresholds of certain Performance Tiers. Particularly, the Performance Tier earned will also determine the percentage credit applied to a Market-Maker's monthly BOE Bulk Port fees, as shown below:

Market maker access credit	Liquidity provider sliding scale adjustment performance tier	Make rate (percent based on prior month)	Percent credit on monthly BOE bulk port fees
Credit Tier	1	0–50	0
	2	Above 50–60	0
	3	Above 60–75	0
	4	Above 75–90	40
	5	Above 90	40

The Exchange believes the proposal mitigates costs incurred by traditional Market-Makers that focus on adding liquidity to the Exchange (as opposed to those that provide and take, or just take). The Exchange lastly notes that both the Market-Maker Affiliate Access Credit under AVP and the Market-Maker Access Credit tied to Performance Tiers can both be earned by a TPH, and these credits will each apply to the total monthly BOE Bulk Port Fees including any incremental BOE Bulk Port fees incurred, before any credits/adjustments have been applied (*i.e.* an electronic MM can earn a credit from 15% to 65%).

Bandwidth Packets

As described above, post-migration, the Exchange utilizes a variety of logical ports. Part of this functionality is similar to bandwidth packets that were previously available on the Exchange. Bandwidth packets restricted the maximum number of orders and quotes per second. Post-migration, market

[26] *See* Cboe BZX Options Exchange Fee Schedule, Options Logical Port Fees.

[27] As noted above, while BOE Bulk Ports will be available to all market participants, the Exchange anticipates they will be used primarily by Market Makers or firms that conduct similar business activity.

[28] For purposes of AVP, ''Affiliate'' is defined as having at least 75% common ownership between the two entities as reflected on each entity's Form BD, Schedule A.

[29] *See* Cboe Options Fees Schedule Footnote 23. Particularly, a Market-Maker may designate an Order Flow Provider (''OFP'') as its ''Appointed OFP'' and an OFP may designate a Market-Maker to be its ''Appointed Market-Maker'' for purposes of qualifying for credits under AVP.

[30] The Exchange notes that Trading Permits currently each include a set bandwidth allowance and 3 logins. Current logins and bandwidth are akin to the proposed logical ports, including BOE Bulk Ports which will primarily be used by Market-Makers.

[31] *See* Cboe Options Exchange Fees Schedule, Liquidity Provider Sliding Scale Adjustment Table.

[32] More specifically, the Make Rate is derived from a Liquidity Provider's electronic volume the previous month in all symbols excluding Underlying Symbol List A using the following formula: (i) The Liquidity Provider's total electronic automatic execution (''auto-ex'') volume (*i.e.,* volume resulting from that Liquidity Provider's resting quotes or single sided quotes/orders that were executed by an incoming order or quote), divided by (ii) the Liquidity Provider's total auto-ex volume (*i.e.,* volume that resulted from the Liquidity Provider's resting quotes/orders and volume that resulted from that LP's quotes/orders that removed liquidity). For example, a TPH's electronic Make volume in September 2019 is 2,500,000 contracts and its total electronic auto-ex volume is 3,000,000 contracts, resulting in a Make Rate of 83% (Performance Tier 4). As such, the TPH would receive a 40% credit on its monthly Bulk Port fees for the month of October 2019. For the month of October 2019, the Exchange will be billing certain incentive programs separately, including the Liquidity Provider Sliding Scale Adjustment Table, for the periods of October 1–October 4 and October 7–October 31 in light of the migration of its billing system. As such, a Market-Maker's Performance Tier for November 2019 will be determined by the Market-Maker's percentage of volume that was Maker from the period of October 7–October 31, 2019.

participants may similarly have multiple Logical Ports and/or BOE Bulk Ports as they may have had bandwidth packets to accommodate their order and quote entry needs. As such, the Exchange proposes to eliminate all of the current Bandwidth Packet fees.[33] The Exchange believes that the proposed pricing implications of going beyond specified bandwidth described above in the logical connectivity fees section will be able to otherwise mitigate message traffic as necessary.

CAS Servers

By way of background, in order to connect to the legacy Cboe Command, which allowed a TPH to trade on the Cboe Options System, a TPH had to connect via either a CMI or FIX interface (depending on the configuration of the TPH's own systems). For TPHs that connected via a CMI interface, they had to use CMI CAS Servers. In order to ensure that a CAS Server was not overburdened by quoting activity for Market-Makers, the Exchange allotted each Market-Maker a certain number of CASs (in addition to the shared backups) based on the amount of quoting bandwidth that they had. The Exchange no longer uses CAS Servers, post-migration. In light of the elimination of CAS Servers, the Exchange proposes to eliminate the CAS Server allotment table and extra CAS Server fee.

Trading Permit Fees

By way of background, the Exchange may issue different types of Trading Permits and determine the fees for those Trading Permits.[34] Pre-migration, the Exchange issued the following three types of Trading Permits: (1) Market-Maker Trading Permits, which were assessed a monthly fee of $5,000 per permit; (2) Floor Broker Trading Permits, which were assessed a monthly fee of $9,000 per permit; and (3) Electronic Access Permits (''EAPs''), which were assessed a monthly fee of $1,600 per permit. The Exchange also offered separate Market-Maker and Electronic Access Permits for the Global Trading Hours (''GTH'') session, which were assessed a monthly fee of $1,000 per permit and $500 per permit respectively.[35] For further color, a Market-Maker Trading Permit entitled the holder to act as a Market-Maker, including a Market-Maker trading remotely, DPM, eDPM, or LMM, and also provided an appointment credit of 1.0, a quoting and order entry bandwidth allowance, up to three logins, trading floor access and TPH status.[36] A Floor Broker Trading Permit entitled the holder to act as a Floor Broker, provided an order entry bandwidth allowance, up to 3 logins, trading floor access and TPH status.[37] Lastly, an EAP entitled the holder to electronic access to the Exchange. Holders of EAPs must have been broker-dealers registered with the Exchange in one or more of the following capacities: (a) Clearing TPH, (b) TPH organization approved to transact business with the public, (c) Proprietary TPHs and (d) order service firms. The permit did not provide access to the trading floor. An EAP also provided an order entry bandwidth allowance, up to 3 logins and TPH status.[38] The Exchange also provided an opportunity for TPHs to pay reduced rates for Trading Permits via the Market Maker and Floor Broker Trading Permit Sliding Scale Programs (''TP Sliding Scales''). Particularly, the TP Sliding Scales allowed Market-Makers and Floor Brokers to pay reduced rates for their Trading Permits if they committed in advance to a specific tier that includes a minimum number of eligible Market-Maker and Floor Broker Trading Permits, respectively, for each calendar year.[39]

As noted above, Trading Permits were tied to bandwidth allocation, logins and appointment costs, and as such, TPH organizations may hold multiple Trading Permits of the same type in order to meet their connectivity and appointment cost needs. Post-Migration, bandwidth allocation, logins and appointment costs are no longer tied to a Trading Permit, and as such, the Exchange proposes to modify its Trading Permit structure. Particularly, in connection with the migration, the Exchange adopted separate on-floor and off-floor Trading Permits for Market-Makers and Floor Brokers, adopted a new Clearing TPH Permit, and proposes to modify the corresponding fees and discounts. As was the case pre-migration, the proposed access fees discussed below will continue to be non-refundable and will be assessed through the integrated billing system during the first week of the following month. If a Trading Permit is issued during a calendar month after the first trading day of the month, the access fee for the Trading Permit for that calendar month is prorated based on the remaining trading days in the calendar month. Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits written notification to the Membership Services Department by 4 p.m. CT on the second-to-last business day of the prior month to cancel the Trading Permit effective at or prior to the end of the applicable month. Trading Permit Holders will only be assessed a single monthly fee for each type of electronic Trading Permit it holds.

First, TPHs no longer need to hold multiple permits for each type of electronic Trading Permit (*i.e.,* electronic Market-Maker Trading Permits and/or and Electronic Access Permits). Rather, for electronic access to the Exchange, a TPH need only purchase one of the following permit types for each trading function the TPH intends to perform: Market-Maker Electronic Access Permit (''MM EAP'') in order to act as an off-floor Market-Maker and which will continue to be assessed a monthly fee of $5,000, Electronic Access Permit (''EAP'') in order to submit orders electronically to the Exchange[40] and which will be assessed a monthly fee of $3,000, and a Clearing TPH Permit, for TPHs acting solely as a Clearing TPH, which will be assessed a monthly fee of $2,000 (and is more fully described below). For example, a TPH organization that wishes to act as a Market-Maker and also submit orders electronically in a non-Market Maker capacity would have to purchase one MM EAP and one EAP. TPHs will be assessed the monthly fee for each type of Permit once per electronic access capacity.

Next, the Exchange proposes to adopt a new Trading Permit, exclusively for Clearing TPHs that are approved to act solely as a Clearing TPH (as opposed to those that are also approved in a capacity that allows them to submit orders electronically). Currently any TPH that is registered to act as a Clearing TPH must purchase an EAP, whether or not that Clearing TPH acts solely as a Clearing TPH or acts as a Clearing TPH and submits orders electronically. The Exchange proposes to adopt a new Trading Permit, for any TPH that is registered to act solely as

[33] *See* Cboe Options Fees Schedule, Bandwidth Packet Fees.

[34] *See* Cboe Options Rules 3.1(a)(iv)–(v).

[35] The fees were waived through September 2019 for the first Market-Maker and Electronic Access GTH Trading Permits.

[36] *See* Cboe Options Fees Schedule.

[37] Id.

[38] Id.

[39] Due to the October 7 migration, the Exchange had amended the TP Sliding Scale Programs to provide that any commitment to Trading Permits under the TP Sliding Scales shall be in place through September 2019, instead of the calendar year. *See* Cboe Options Fees Schedule, Footnotes 24 and 25.

[40] EAPs may be purchased by TPHs that both clear transactions for other TPHs (*i.e.,* a ''Clearing TPH'') and submit orders electronically.

Clearing TPH at a discounted rate of $2,000 per month.[41]

Additionally, the Exchange proposes to eliminate its fees for Global Trading Hours Trading Permits. Particularly, the Exchange proposes to provide that any Market-Maker EAP, EAP and Clearing TPH Permit provides access (at no additional cost) to the GTH session.[42] Additionally, the Exchange proposes to amend Footnote 37 of the Fees Schedule regarding GTH in connection with the migration. Currently Footnote 37 provides that separate access permits and connectivity is needed for the GTH session. The Exchange proposes to eliminate this language as that is no longer the case post-migration (*i.e.,* an electronic Trading Permits will grant access to both sessions and physical and logical ports may be used in both sessions, eliminating the need to purchase separate connectivity). The Exchange also notes that in connection with migration, the Book used during Regular Trading Hours (''RTH'') will be the same Book used during GTH (as compared to pre-migration where the Exchange maintained separate Books for each session). The Exchange therefore also proposes to eliminate language in Footnote 37 stating that GTH is a segregated trading session and that there is no market interaction between the two sessions.

The Exchange next proposes to adopt MM EAP Appointment fees. By way of background, a registered Market-Maker may currently create a Virtual Trading Crowd (''VTC'') Appointment, which confers the right to quote electronically in an appropriate number of classes selected from ''tiers'' that have been structured according to trading volume statistics, except for the AA tier.[43] Each Trading Permit historically held by a Market-Maker had an appointment credit of 1.0. A Market-Maker could select for each Trading Permit the Market-Maker held any combination of classes whose aggregate appointment cost did not exceed 1.0. A Market-Maker could not hold a combination of appointments whose aggregate appointment cost was greater than the number of Trading Permits that Market-Maker held.[44]

As discussed, post-migration, bandwidth allocation, logins and appointment costs are no longer tied to a single Trading Permit and therefore TPHs no longer need to have multiple permits for each type of electronic Trading Permit. Market-Makers must still select class appointments in the classes they seek to make markets electronically.[45] Particularly, a Market-Maker firm will only be required to have one permit and will thereafter be charged for one or more ''Appointment Units'' (which will scale from 1 ''unit'' to more than 5 ''units''), depending on which classes they elect appointments in. Appointment Units will replace the standard 1.0 appointment cost, but function in the same manner. Appointment weights (formerly known as ''appointment costs'') for each appointed class will be set forth in Cboe Options Rule 5.50(g) and will be summed for each Market-Maker in order to determine the total appointment units, to which fees will be assessed. This was the manner in which the tier costs per class appointment were summed to meet the 1.0 appointment cost, the only difference being that if a Market-Maker exceeds this ''unit'', then their fees will be assessed under the ''unit'' that corresponds to the total of their appointment weights, as opposed to holding another Trading Permit because it exceeded the 1.0 ''unit''. Particularly, the Exchange proposes to adopt a new MM EAP Appointment Sliding Scale. Appointment Units for each assigned class will be aggregated for each Market-Maker and Market-Maker affiliate. If the sum of appointments is a fractional amount, the total will be rounded up to the next highest whole Appointment Unit. The following lists the progressive monthly fees for Appointment Units:[46]

Market-maker EAP appointments	Quantity	Monthly fees (per unit)
Appointment Units.	1	$0
	2	6,000
	3 to 5	4,000
	>5	3,100

As noted above, upon migration the Exchange required separate Trading Permits for on-floor and off-floor activity. As such, the Exchange proposes to maintain a Floor Broker Trading Permit and adopt a new Market-Maker Floor Permit for on-floor Market-Makers. In addition, RUT, SPX, and VIX Tier Appointment fees will be charged separately for Permit, as discussed more fully below.

As briefly described above, the Exchange currently maintains TP Sliding Scales, which allow Market-Makers and Floor Brokers to pay reduced rates for their Trading Permits if they commit in advance to a specific tier that includes a minimum number of eligible Market-Maker and Floor Broker Trading Permits, respectively, for each calendar year. The Exchange proposes to eliminate the current TP Sliding Scales, including the requirement to commit to a specific tier, and replace it with new TP Sliding Scales as follows:[47]

Floor TPH permits	Current permit Qty	Current monthly fee (per permit)	Proposed permit Qty	Proposed monthly fee (per permit)
Market-Maker Floor Permit	1–10	$5,000	1	$6,000
	11–20	3,700	2 to 5	4,500
	21 or more	1,800	6 to 10	3,500
			>10	2,000
Floor Broker Permit	1	9,000	1	7,500
	2–5	5,000	2 to 3	5,700

[41] Cboe Option Rules provides the Exchange authority to issue different types of Trading Permits which allows holders, among other things, to act in one or more trading functions authorized by the Rules. *See* Cboe Options Rule 3.1(a)(iv). The Exchange notes that currently 17 out of 38 Clearing TPHs are acting solely as a Clearing TPH on the Exchange.

[42] The Exchange notes that Clearing TPHs must be properly authorized by the Options Clearing Corporation (''OCC'') to operate during the Global Trading Hours session and all TPHs must have a Letter of Guarantee to participate in the GTH session (as is the case today).

[43] *See* Cboe Options Rule 5.50 (Appointment of Market-Makers).

[44] For example, if a Market-Maker selected a combination of appointments that has an aggregate appointment cost of 2.5, that Market-Maker must hold at least 3 Market-Maker Trading Permits.

[45] *See* Cboe Options Rule 5.50(a).

[46] For example, if a Market-Maker's total appointment costs amount to 3.5 unites, the Market-Maker will be assessed a total monthly fee of $14,000 (1 appointment unit at $0, 1 appointment unit at $6,000 and 2 appointment units at $4,000) as and for appointment fees and $5,000 for a Market-Maker Trading Permit, for a total monthly sum of $19,000, where a Market-Maker currently (*i.e.,* prior to migration) with a total appointment cost of 3.5 would need to hold 4 Trading Permits and would therefore be assessed a monthly fee of $20,000.

[47] In light of the proposed change to eliminate the TP Sliding Scale, the Exchange proposes to eliminate Footnote 24 in its entirety.

Floor TPH permits	Current permit Qty	Current monthly fee (per permit)	Proposed permit Qty	Proposed monthly fee (per permit)
	6 or more	3,000	4 to 5	4,500
			>5	3,200

Floor Broker ADV Discount

Footnote 25, which governs rebates on Floor Broker Trading Permits, currently provides that any Floor Broker that executes a certain average of customer or professional customer/voluntary customer (collectively ''customer'') open-outcry contracts per day over the course of a calendar month in all underlying symbols excluding Underlying Symbol List A (except RLG, RLV, RUI, and UKXM), DJX, XSP, and subcabinet trades (''Qualifying Symbols''), will receive a rebate on that TPH's Floor Broker Trading Permit Fees. Specifically, any Floor Broker Trading Permit Holder that executes an average of 15,000 customer (''C'' origin code) and/or professional customer and voluntary customer (''W'' origin code) open-outcry contracts per day over the course of a calendar month in Qualifying Symbols will receive a rebate of $9,000 on that TPH's Floor Broker Trading Permit fees. Additionally, any Floor Broker that executes an average of 25,000 customer open-outcry contracts per day over the course of a calendar month in Qualifying Symbols will receive a rebate of $14,000 on that TPH's Floor Broker Trading Permit fees. The Exchange proposes to maintain, but modify, its discount for Floor Broker Trading Permit fees. First, the measurement criteria to qualify for a rebate will be modified to only include customer (''C'' origin code) open-outcry contracts executed per day over the course of a calendar month in all underlying symbols, while the rebate amount will be modified to be a percentage of the TPH's Floor Broker Permit total costs, instead of a straight rebate.[48] The criteria and corresponding percentage rebates are noted below.[49]

Floor broker ADV discount tier	ADV	Floor broker permit rebate (%)
1	0 to 99,999	0
2	100,000 to 174,999	15
3	>174,999	25

Next, the Exchange proposes to modify its SPX, VIX and RUT Tier Appointment Fees. Currently, these fees are assessed to any Market-Maker TPH that either (i) has the respective SPX, VIX or RUT appointment at any time during a calendar month and trades a specified number of contracts or (ii) trades a specified number of contracts in open outcry during a calendar month. More specifically, the Fees Schedule provides that the $3,000 per month SPX Tier Appointment is assessed to any Market-Maker Trading Permit Holder that either (i) has an SPX Tier Appointment at any time during a calendar month and trades at least 100 SPX contracts while that appointment is active or (ii) conducts any open outcry transaction in SPX or SPX Weeklys at any time during the month. The $2,000 per month VIX Tier Appointment is assessed to any Market-Maker Trading Permit Holder that either (i) has an SPX Tier Appointment at any time during a calendar month and trades at least 100 VIX contracts while that appointment is active or (ii) conducts at least 1000 open outcry transaction in VIX at any time during the month. Lastly, the $1,000 RUT Tier Appointment is assessed to any Market-Maker Trading Permit Holder that either (i) has an RUT Tier Appointment at any time during a calendar month and trades at least 100 RUT contracts while that appointment is active or (ii) conducts at least 1000 open outcry transaction in RUT at any time during the month.

Because the Exchange is separating Market-Maker Trading Permits for electronic and open-outcry market-making, the Exchange will be assessing separate Tier Appointment Fees for each type of Market-Maker Trading Permit. The Exchange proposes that a MM EAP will be assessed the Tier Appointment Fee whenever the Market-Maker executes the corresponding specified number of contracts, if any. The Exchange also proposes to modify the threshold number of contracts a Market-Maker must execute in a month to trigger the fee for SPX, VIX and RUT. Particularly, for SPX, the Exchange proposes to eliminate the 100 contract threshold for electronic SPX executions.[50] The Exchange notes that historically, all TPHs that trade SPX electronically executed more than 100 contracts electronically each month (*i.e.,* no TPH electronically traded between 1 and 100 contracts of SPX). As no TPH would currently be negatively impacted by this change, the Exchange proposes to eliminate the threshold for SPX and align the electronic SPX Tier Appointment Fee with that of the floor SPX Tier Appointment Fee, which is not subject to any executed volume threshold. For the VIX and RUT Tier appointments, the Exchange proposes to increase the threshold from 100 contracts a month to 1,000 contracts a month. The Exchange notes the Tier Appointment Fee amounts are not changing.[51] In connection with the proposed changes, the Exchange

[48] As is the case today, the Floor Broker ADV Discount will be available for all Floor Broker Trading Permits held by affiliated Trading Permit Holders and TPH organizations.

[49] In light of the proposal to eliminate the TP Sliding Scales and the Floor Broker rebates currently set forth under Footnote 25, the Exchange proposes to eliminate Footnote 25 in its entirety.

[50] The Exchange notes that subsequent to the Original Filing that proposed these changes on October 1 and 2, 2019 (SR–CBOE–2019–077 and SR–CBOE–2019–082), and subsequent to the Second Proposed Rule Change filing that proposed these changes on November 29, 2019 (SR–CBOE–2019–111), the Exchange amended the proposed Market-Maker Tier Appointment fees to provide that the SPX Tier Appointment Fee will be assessed to any Market-Maker EAP that executes at least 1,000 contracts in SPX (including SPXW) excluding contracts executed during the opening rotation on the final settlement date of VIX options and futures with the expiration used in the VIX settlement calculation in filing No. SR–CBOE–2019–124. The additions proposed by filing SR–CBOE–2019–124 are double underlined in Exhibit 5A and the deletions are doubled bracketed in Exhibit 5A.

[51] Floor Broker Trading Surcharges for SPX/SPXW and VIX are also not changing. The Exchange however, is creating a new table for Floor Broker Trading Surcharges and relocating such fees in the Fees Schedule in connection with the proposal to eliminate fees currently set forth in the ''Trading Permit and Tier Appointment Fees'' Table.

proposes to relocate the Tier Appointment Fees to a new table and eliminate the language in the current respective notes sections of each Tier Appointment Fee as it is no longer necessary.

Trading Permit Holder Regulatory Fee

The Fees Schedule provides for a Trading Permit Holder Regulatory Fee of $90 per month, per RTH Trading Permit, applicable to all TPHs, which fee helps more closely cover the costs of regulating all TPHs and performing regulatory responsibilities. In light of the changes to the Exchange's Trading Permit structure, the Exchange proposes to eliminate the TPH Regulatory Fee. The Exchange notes that there is no regulatory requirement to maintain this fee.

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.[52] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [53] 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,[54] 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [55] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange first stresses that the proposed changes were not designed with the objective to generate an overall increase in access fee revenue, as demonstrated by the anticipated loss of revenue discussed above. Rather, the proposed changes were prompted by the Exchange's technology migration and the adoption of a new (and improved) connectivity infrastructure, rendering the pre-migration structure obsolete. Such changes accordingly necessitated an overhaul of the Exchange's previous access fee structure and corresponding fees. Moreover, the proposed changes more closely aligns the Exchange's access fees to those of its Affiliated Exchanges, and reasonably so, as the Affiliated Exchanges offer substantially similar connectivity and functionality and are on the same platform that the Exchange has now migrated to.

The Exchange also notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 21% of the market share.[56] Further, low barriers to entry mean that new exchanges may rapidly and inexpensively enter the market and offer additional substitute platforms to further compete with the Exchange. There is also no regulatory requirement that any market participant connect to any one options exchange, that any market participant connect at a particular connection speed or act in a particular capacity on the Exchange, or trade any particular product offered on an exchange. Moreover, membership is not a requirement to participate on the Exchange. A market participant may submit orders to the Exchange via a TPH broker.[57] Indeed, the Exchange is unaware of any one options exchange whose membership includes every registered broker-dealer.[58] The rule structure for options exchanges are, in fact, fundamentally different from those of equities exchanges. In particular, options market participants are not forced to connect to (and purchase market data from) all options exchanges. For example, there are many order types that are available in the equities markets that are not utilized in the options markets, which relate to mid-point pricing and pegged pricing which require connection to the SIPs and each of the equities exchanges in order to properly execute those orders in compliance with best execution obligations. Additionally, in the options markets, the linkage routing and trade through protection are handled by the exchanges, not by the individual members. Thus not connecting to an options exchange or disconnecting from an options exchange does not potentially subject a broker-dealer to violate order protection requirements. Gone are the days when the retail brokerage firms (the Fidelity's, the Schwab's, the eTrade's) were members of the options exchanges—they are not members of the Exchange or its affiliates, they do not purchase connectivity to the Exchange, and they do not purchase market data from the Exchange. The Exchange is also not aware of any reason why any particular market participant could not simply drop its connections and cease being a TPH of the Exchange if the Exchange were to establish ''unreasonable'' and uncompetitive price increases for its connectivity alternatives. Indeed, a number of firms currently do not participate on the Exchange or participate on the Exchange though sponsored access arrangements rather than by becoming a member.

Additionally, the Exchange notes that non-TPHs such as Service Bureaus and Extranets resell Cboe Options connectivity.[59] This indirect connectivity is another viable alternative that is already being used by non-TPHs, which further constrains the price that the Exchange is able to charge for connectivity to its Exchange. Accordingly, in the event that a market participant views one exchange's direct connectivity and access fees as more or less attractive than the competition, they can choose to connect to that exchange indirectly or may choose not to connect to that exchange and connect instead to one or more of the other 15

[52] 15 U.S.C. 78f(b).

[53] 15 U.S.C. 78f(b)(5).

[54] 15 U.S.C. 78f(b)(4).

[55] 15 U.S.C. 78f(b)(5).

[56] *See* Cboe Global Markets U.S. Options Market Volume Summary (March 26, 2020), available at *https://markets.cboe.com/us/options/market_statistics/.*

[57] Such market participant would be subject to the fees of that broker. The Exchange notes that such broker is not required to publicize, let alone justify or file with the Commission its fees, and as such could charge the market participant any fees it deems appropriate, even if such fees would otherwise be considered potentially unreasonable or uncompetitive fees.

[58] The Exchange further notes that even the number of members between the Exchange and its 3 other options exchange affiliates vary.

[59] Prior to migration, there were 13 firms that resold Cboe Options connectivity. Post-migration, the Exchange anticipated that there would be 19 firms that resell Cboe Options connectivity (both physical and logical) and as of January 2020 there are 15 firms that resell Cboe Options connectivity. The Exchange does not receive any connectivity revenue when connectivity is resold by a third-party, which often is resold to multiple customers, some of whom are agency broker-dealers that have numerous customers of their own. The Exchange does not have specific knowledge as to what latency a market participant may experience using an indirect connection versus a direct connection and notes it may vary by the service provided by the extranet provider and vary between extranet providers. The Exchange believes however, that there are extranet providers able to provide connections with a latency that is comparable to latency experienced using a direct connection.

options markets. For example, two TPHs that connected directly to the Exchange pre-migration, now connect indirectly via an extranet provider. The Exchange notes that it has not received any comments that, and has no evidence to suggest, the two TPHs that transitioned from direct connections to an indirect connections post-migration were the result of an undue financial burden resulting from the proposed fee changes.[60] Rather, the Exchange believes the transitions demonstrate that indirect connectivity is in fact a viable option for market participants, therefore reflecting a competitive environment. It further demonstrates the manner in which market participants connect to the Exchange is entirely within the discretion of market participants, who can consider the fees charged by the Exchange and by resellers when making decisions.

Additionally, pre-migration, in August 2019, the Exchange had 97 members (TPH organizations), of which nearly half connected indirectly to the Exchange. Similarly, in December 2019, the Exchange had 97 members, of which nearly half of the participants connected indirectly to the Exchange.[61] More specifically, in December 2019, 47 TPHs connected directly to the Exchange and accounted for approximately 66% of the Exchange's volume, 46 TPHs connected indirectly to the Exchange and accounted for approximately 29% of the Exchange's volume and 4 TPHs utilized both direct and indirect connections and accounted for approximately 5% of the Exchange's volume. In December 2019, TPHs that connected directly to the Exchange purchased a collective 179 physical ports (including legacy physical ports), 144 of which were 10 Gb ports and 35 of which were 1 Gb ports.[62] The Exchange notes that of those market participants that do connect to the Exchange, it is the individual needs of each market participant that determine the amount and type of Trading Permits and physical and logical connections to the Exchange.[63] With respect to physical connectivity, many TPHs were able to purchase small quantities of physical ports. For example, approximately 36% of TPHs that connected directly to the Exchange purchased only one to two 1 Gb ports, approximately 40% purchased only one to two 10 Gb ports, and approximately 40% had purchased a combined total of one to two ports (for both 1 Gb and 10 Gb). Further, no TPHs that connected directly to the Exchange had more than five 1 Gb ports, and only 8.5% of TPHs that connected directly to the Exchange had between six and ten 10 GB ports and only 8.5% had between ten and fourteen 10 Gb ports. There were also a combined total of 41 ports used for indirect connectivity (twenty-one 1 Gb ports and twenty 10 Gb ports).[64] The Exchange notes that all types of members connected indirectly to the Exchange including Clearing firms, Floor Brokers, order flow providers, and on-floor and off-floor Market-Makers, further reflecting the fact that each type of market participant has the option to participate on an exchange without direct connectivity.

Accordingly, market participants choose if and how to connect to a particular exchange and because it is a choice, the Exchange must set reasonable connectivity pricing, otherwise prospective members would not connect and existing members would disconnect or connect through a third-party reseller of connectivity.

Moreover, the Exchange notes that the Commission itself has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [65] The number of available exchanges to connect to ensures increased competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees for access to its market. The Exchange is also not aware of any evidence that has been offered or demonstrated that a market share of approximately 21% provides the Exchange with anti-competitive pricing power. As discussed, if an exchange sets too high of a fee for connectivity and/or market data services for its relevant marketplace, market participants can choose to disconnect from the Exchange.

The Exchange also believes that competition in the marketplace constrains the ability of exchanges to charge supracompetitive fees for access to its market, even if such market, like the Exchange, offers proprietary products exclusive to that market. Notably, just as there is no regulatory requirement to become a member of any one options exchange, there is also no regulatory requirement for any market participant to trade any particular product, nor is there any requirement that any Exchange create or indefinitely maintain any particular product.[66] The Exchange also highlights that market participants may trade an Exchange's proprietary products through a third-party without directly or indirectly connecting to the Exchange. Additionally, market participants may trade any options product, including proprietary products, in the Over-the-Counter (OTC) markets. Market participants may also access other exchanges to trade other similar or competing proprietary or multi-listed products. Alternative products to the Exchange's proprietary products may include other options products, including options on ETFs or options futures, as well as particular ETFs or futures. For example, singly-listed SPX options may compete with the following products traded on other markets: Multiply-listed SPY options (options on the ETF), E-mini S&P 500 Options (options on futures), and E-Mini S&P 500 futures (futures on index). Additionally, exclusively listed VIX options may compete with the following products traded on other markets: Multiply-listed VXX options (options on the ETF) and exclusively listed SPIKES options on the Miami International

[60] The Exchange notes that TPHs are not required to specify to the Exchange why it opts to no longer be a TPH, or why it cancels its ports, nor is a non-TPH market participating required to specify to the Exchange why it opts to not be a TPH and directly connect to the Exchange.

[61] As of April 30, 2020, the Exchange had 94 TPH organizations.

[62] Of the 4 TPHs that connected both directly and indirectly to the Exchange, 1 TPH had two 1 Gb Ports and the remaining 3 TPHs had a combined total of six 10 Gb ports.

[63] To assist market participants that are connected or considering connecting to the Exchange, the Exchange provides detailed information and specifications about its available connectivity alternatives in the Cboe C1 Options Exchange Connectivity Manual, as well as the various technical specifications. *See http://markets.cboe.com/us/options/support/technical/*.

[64] The Exchange notes that it does not know how many, and which kind of, connections each TPH that indirectly connects to the Exchange has.

[65] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[66] If an option class is open for trading on another national securities exchange, the Exchange may delist such option class immediately. For proprietary products, the Exchange may determine to not open for trading any additional series in that option class; may restrict series with open interest to closing transactions, provided that, opening transactions by Market-Makers executed to accommodate closing transactions of other market participants and opening transactions by TPH organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with Rule 6.74(b) or (d) may be permitted; and may delist the option class when all series within that class have expired. *See* Cboe Rule 4.4, Interpretations and Policies .11.

Securities Exchange, LLC (''MIAX'').[67] Other options exchanges are also not precluded from creating new proprietary products that may achieve similar objectives to (and therefore compete with) the Exchange's existing proprietary products. For example, Nasdaq PHLX exclusively lists options on the Nasdaq-100, which options, like index options listed on the Exchange, offer investors an alternative method to manage and hedge portfolio exposure to the U.S. equity markets. Indeed, even though exclusively-listed proprietary products may not be offered by competitors, a competitor could create similar products if demand were adequate. As noted above for example, MIAX created its exclusive product SPIKES. In connection with a recently proposed amendment to the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''),[68] the Commission discussed the existence of competition in the marketplace generally, and particularly for exchanges with unique business models. Specifically, the Commission contemplated the possibility of a forced exit by an exchange as a result of a proposed amendment that could reduce the amount of CAT funding a participant could recover if certain implementation milestones were missed. The Commission acknowledged that, even if an exchange were to exit the marketplace due to its proposed fee-related change, it would not significantly impact competition in the market for exchange trading services because these markets are served by multiple competitors.[69] The Commission explicitly stated that ''[c]onsequently, demand for these services in the event of the exit of a competitor is likely to be swiftly met by existing competitors.'' [70] The Commission further recognized that while some exchanges may have a unique business model that is not currently offered by competitors, a competitor could create similar business models if demand were adequate, and if they did not do so, the Commission believes it would be likely that new entrants would do so if the exchange with that unique business model was otherwise profitable.[71] Similarly, although the Exchange may have proprietary products not offered by other competitors, not unlike unique business models, a competitor could create similar products to an existing proprietary product if demand were adequate. As noted above, other exchanges, that have comparable connectivity fees, also currently offer exclusively listed products.[72] As such, the Exchange is still very much subject to competition and does not possess anti-competitive pricing power, even with its offering of proprietary products. Rather, the Exchange must still set reasonable connectivity pricing, otherwise prospective members would not connect, and existing members would disconnect or connect through a third-party reseller of connectivity, regardless of what products its offers.

For all the reasons discussed above and in this filing, the Exchange believes its proposed fees are reasonable as the Exchange was subject to significant competitive forces in setting its proposed fees. In addition, the Exchange believes its proposed fees are reasonable in light of the numerous benefits the new connectivity infrastructure provides market participants. As described, the post-migration connectivity architecture provides for a latency equalized infrastructure, improved system performance, and increased sustained order and quote per second capacity. As such, even where a fee for a particular type or kind of connectivity may be higher than it was to its pre-migration equivalent, such increase is reasonable given the increased benefits market participants are getting for a similar or modestly higher price. The Exchange further believes that the reasonableness of its proposed connectivity fees is demonstrated by the very fact that such fees are in line with, and in some cases lower than, the costs of connectivity at other Exchanges,[73] including its own affiliated exchanges which have the same connectivity infrastructure the Exchange has migrated to.[74]

Furthermore, in determining the proposed fee changes discussed above, the Exchange reviewed the current competitive landscape, considered the fees historically paid by market participants for connectivity to the pre-migration system, and also assessed the impact on market participants to ensure that the proposed fees would not create an undue financial burden on any market participants, including smaller market participants. Indeed, the Exchange received no comments from any TPH suggesting they were unduly burdened by the proposed changes described herein, which were first announced via Exchange Notice nearly two months in advance of the migration (*i.e.,* now seven months ago), nor were any timely comment letters received by the Commission by the comment period submission deadline of November 12, 2019.[75] The Exchange also underscores the fact that no comment letters were received in response to either its Second Proposed Rule Change or Third Proposed Rule Change, and that no individual market participant has provided any written comments specifically suggesting that the Exchange has failed to provide sufficient information in the Second, Third or Fourth Proposed Rule Change to meets its burden to demonstrate its proposed fees are consistent with the requirements of the Exchange Act.

The proposed connectivity structure and corresponding fees, like the pre-migration connectivity structure and fees, continues to provide market participants flexibility with respect to how to connect to the Exchange based on each market participants' respective business needs. For example, the amount and type of physical and logical ports are determined by factors relevant and specific to each market participant, including its business model, costs of connectivity, how its business is segmented and allocated and volume of messages sent to the Exchange. Moreover, the Exchange notes that it

[67] MIAX has described SPIKES options as ''designed specifically to compete head-to-head against Cboe's proprietary VIX® product.'' *See* MIAX Press Release, *SPIKES Options Launched on MIAX,* February 21, 2019, *available at https://www.miaxoptions.com/sites/default/files/press_release-files/MIAX_Press_Release_02212019.pdf.*

[68] *See* Securities Exchange Act Release No. 86901 (September 9, 2019), 84 FR 48458 (September 13, 2019) (File No. S7–13–19).

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *See e.g.,* Nasdaq PHLX LLC Rules, (Options 7 Pricing Schedule), Section 8A (Permit and Registration Fees) which provide for floor permit fees between $4,000 to $6,000 per permit and Section 9B (Port Fees), which provides various port fees ranging from $500 to $1,250 per port. *See also* Nasdaq PHLX LLC Rules, General 8 Connectivity, which provides for monthly physical connectivity fees including fees for 1 Gb physical connections priced at $2,500 per port and for 10 Gb physical connections starting at $10,000 per port.

[73] *See e.g.,* Nasdaq PHLX and ISE Rules, General Equity and Options Rules, General 8. Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection. *See also* Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of $7,500 for each 10Gb direct connection to Nasdaq and $2,500 for each direct connection that supports up to 1Gb. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit.

[74] *See e.g.,* Affiliated Exchange Fee Schedules, Physical Connectivity Fees. For example, Cboe BZX, Cboe EDGX and C2 each charge a monthly fee of $2,500 for each 1Gb connection and $7,500 for each 10Gb connection.

[75] *See* Exchange Notice ''Cboe Options Exchange Access and Capacity Fee Schedule Changes Effective October 1, 2019 and November 1, 2019'' Reference ID C2019081900.

does not have unlimited system capacity to support an unlimited number of order and quote entry per second. Accordingly, the proposed connectivity fees, and connectivity structure are designed to encourage market participants to be efficient with their respective physical and logical port usage. While the Exchange has no way of predicting with certainty the amount or type of connections market participants will in fact purchase, if any, the Exchange anticipates that like today, some market participants will continue to decline to connect and participate on the Exchange, some will participate on the Exchange via indirect connectivity, some will only purchase one physical connection and/or logical port connection, and others will purchase multiple connections.

In sum, the Exchange believes the proposed fees are reasonable and reflect a competitive environment, as the Exchange seeks to amend its access fees in connection with the migration of its technology platform, while still attracting market participants to continue to be, or become, connected to the Exchange.

Physical Ports

The Exchange believes increasing the fee for the new 10 Gb Physical Port is reasonable because unlike, the current 10 Gb Network Access Ports, the new Physical Ports provides a connection through a latency equalized infrastructure with faster switches and also allows access to both unicast order entry and multicast market data with a single physical connection. As discussed above, legacy Network Access Ports do not permit market participants to receive unicast and multicast connectivity. As such, in order to receive both connectivity types pre-migration, a market participant needed to purchase and maintain at least two 10 Gb Network Access Ports. The proposed Physical Ports not only provide latency equalization (*i.e.,* eliminate latency advantages between market participants based on location) as compared to the legacy ports, but also alleviate the need to pay for two physical ports as a result of needing unicast and multicast connectivity. Accordingly, market participants who historically had to purchase two separate ports for each of multicast and unicast activity, will be able to purchase only one port, and consequently pay lower fees overall. For example, pre-migration if a TPH had two 10 Gb legacy Network Access Ports, one of which received unicast traffic and the other of which received multicast traffic, that TPH would have been assessed $10,000 per month ($5,000 per port). Under the proposed rule change, using the new Physical Ports, that TPH has the option of utilizing one single port, instead of two ports, to receive both unicast and multicast traffic, therefore paying only $7,000 per month for a port that provides both connectivity types. The Exchange notes that pre-migration, approximately 50% of TPHs maintained two or more 10 Gb Network Access Ports. While the Exchange has no way of predicting with certainty the amount or type of connections market participants will in fact purchase post-migration, the Exchange anticipated approximately 50% of the TPHs with two or more 10 Gb Network Access Ports to reduce the number of 10 Gb Physical Ports that they purchase and expected the remaining 50% of TPHs to maintain their current 10 Gb Physical Ports, but reduce the number of 1 Gb Physical Ports. Particularly, pre-migration, a number of TPHs maintained two 10 Gb Network Access Ports to receive multicast data and two 1 Gb Network Access Ports for order entry (unicast connectivity). As the new 10 Gb Physical Ports are able to accommodate unicast connectivity (order entry), TPHs may choose to eliminate their 1 Gb Network Access Ports and utilize the new 10 Gb Physical Ports for both multicast and unicast connectivity. The Exchange notes that in February 2020, approximately 78% of TPHs that maintained a 1 Gb Network Access Port pre-migration, no longer maintained a 1 Gb Physical Port. Additionally, as of February 2020, approximately 44% reduced the quantity of 10 Gb Physical Ports they maintained as compared to pre-migration.

As discussed above, if a TPH deems a particular exchange as charging excessive fees for connectivity, such market participants may opt to terminate their connectivity arrangements with that exchange, and adopt a possible range of alternative strategies, including routing to the applicable exchange through another participant or market center or taking that exchange's data indirectly. Accordingly, if the Exchange charges excessive fees, it would stand to lose not only connectivity revenues but also revenues associated with the execution of orders routed to it, and, to the extent applicable, market data revenues. The Exchange believes that this competitive dynamic imposes powerful restraints on the ability of any exchange to charge unreasonable fees for physical connectivity. The Exchange also notes that the proposal represents an equitable allocation of reasonable dues, fees and other charges as its fees for physical connectivity are reasonably constrained by competitive alternatives, as discussed above. The proposed amounts are in line with, and in some cases lower than, the costs of physical connectivity at other Exchanges,[76] including the Cboe Affiliated Exchanges, which have the same connectivity infrastructure the Exchange has migrated to and some of which also offer exclusive products.[77] The Exchange does not believe it is unreasonable to assess fees that are in line with fees that have already been established for the same physical ports used to connect to the same connectivity infrastructure and common platform. The Exchange believes the proposed Physical Port fees are equitable and not unreasonably discriminatory as the connectivity pricing is associated with relative usage of the various market participants (including smaller participants) and the Exchange has not been presented with any evidence to suggest its proposed fee changes would impose a barrier to entry for participants, including smaller participants. In fact, as noted above, the Exchange is unaware of any market participant that has terminated direct connectivity solely as a result of the proposed fee changes. The Exchange also believes increasing the fee for 10 Gb Physical Ports and charging a higher fee as compared to the 1 Gb Physical Port is equitable as the 1 Gb Physical Port is 1/10th the size of the 10 Gb Physical Port and therefore does not offer access to many of the products and services offered by the Exchange (*e.g.,* ability to receive certain market data products). Thus the value of the 1 Gb alternative is lower than the value of the 10 Gb alternative, when measured based on the type of Exchange access it offers. Moreover, market participants that purchase 10 Gb Physical Ports utilize the most bandwidth and therefore consume the most resources from the

[76] *See e.g.,* Nasdaq PHLX and ISE Rules, General Equity and Options Rules, General 8. Phlx and ISE each charge a monthly fee of $2,500 for each 1Gb connection, $10,000 for each 10Gb connection and $15,000 for each 10Gb Ultra connection. *See also* Nasdaq Price List—Trading Connectivity. Nasdaq charges a monthly fee of $7,500 for each 10Gb direct connection to Nasdaq and $2,500 for each direct connection that supports up to 1Gb. *See also* NYSE American Fee Schedule, Section V.B, and Arca Fees and Charges, Co-Location Fees. NYSE American and Arca each charge a monthly fee of $5,000 for each 1Gb circuit, $14,000 for each 10Gb circuit and $22,000 for each 10Gb LX circuit.

[77] *See e.g.,* Affiliated Exchange Fee Schedules, Physical Connectivity Fees. For example, Cboe BZX, Cboe EDGX and C2 each charge a monthly fee of $2,500 for each 1Gb connection and $7,500 for each 10Gb connection.

network. As such, the Exchange believes the proposed fees for the 1 and 10 Gb Physical Ports, respectively are reasonably and appropriately allocated.

Data Port Fees

The Exchange believes assessing the data port fee per data source, instead of per port, is reasonable because it may allow for market participants to maintain more ports at a lower cost and applies uniformly to all market participants. The Exchange believes the proposed increase is reasonable because, as noted above, market participants may pay lower fees as a result of charging per data source and not per data port. Indeed, while the Exchange has no way of predicting with certainty the impact of the proposed changes, the Exchange had anticipated approximately 76% of the 51 market participants who pay data port fees to pay the same or lower fees upon implementation of the proposed change. As of December 2019, 46 market participants [78] pay the proposed data port fees, of which approximately 78% market participants are paying the same or lower fees in connection with the proposed change. Monthly savings for firms paying lower fees range from $500 to $6,000 per month. The Exchange also anticipated that 19% of TPHs who pay data port fees would pay a modest increase of only $500 per month. In December 2019, approximately 22% market participants paid higher fees, with the majority of those market participants paying a modest monthly increase of $500 and only 3 firms paying either $1,000 or $1,500 more per month. Additionally, as discussed above, the Exchange's affiliate C2 has the same fee which is also assessed at the proposed rate and assessed by data source instead of per port. The proposed name change is also appropriate in light of the Exchange's proposed changes and may alleviate potential confusion.

Logical Connectivity

Port fees

The Exchange believes it's reasonable to eliminate certain fees associated with legacy options for connecting to the Exchange and to replace them with fees associated with new options for connecting to the Exchange that are similar to those offered at its Affiliated Exchanges. In particular, the Exchange believes it's reasonable to no longer assess fees for CMI and FIX Login IDs because the Login IDs were retired and rendered obsolete upon migration and because the Exchange is proposing to replace them with fees associated with the new logical connectivity options. The Exchange believes that it is reasonable to harmonize the Exchange's logical connectivity options and corresponding connectivity fees now that the Exchange is on a common platform as its Affiliated Exchanges. Additionally, the Exchange notes the proposed fees are the same as, or in line with, the fees assessed on its Affiliated Exchanges for similar connectivity.[79] The proposed logical connectivity fees are also equitable and not unfairly discriminatory because the Exchange will apply the same fees to all market participants that use the same respective connectivity options.

The Exchange believes the proposed Logical Port fees are reasonable as it is the same fee for Drop Ports and the first five BOE/FIX Ports that is assessed for CMI and FIX Logins, which the Exchange is eliminating in lieu of logical ports. Additionally, while the proposed ports will be assessed the same monthly fees as current CMI/FIX Login IDs, the proposed logical ports provide for significantly more message traffic. Specifically, the proposed BOE/FIX Logical Ports will provide for 3 times the amount of quoting [80] capacity and approximately 165 times order entry capacity. Similarly, the Exchange believes the proposed BOE Bulk Port fees are reasonable because while the fees are higher than the CMI and FIX Login Id fees and the proposed Logical Port fees, BOE Bulk Ports offer significantly more bandwidth capacity than both CMI and FIX Login Ids and Logical Ports. Particularly, a single BOE Bulk Port offers 45 times the amount of quoting bandwidth than CMI/FIX Login Ids [81] and 5 times the amount of quoting bandwidth than Logical Ports will offer. Additionally, the Exchange believes that its fees for logical connectivity are reasonable, equitable, and not unfairly discriminatory as they are designed to ensure that firms that use the most capacity pay for that capacity, rather than placing that burden on market participants that have more modest needs. Although the Exchange charges a ''per port'' fee for logical connectivity, it notes that this fee is in effect a capacity fee as each FIX, BOE or BOE Bulk port used for order/quote entry supports a specified capacity (*i.e.,* messages per second) in the matching engine, and firms purchase additional logical ports when they require more capacity due to their business needs.

An obvious driver for a market participant's decision to purchase multiple ports will be their desire to send or receive additional levels of message traffic in some manner, either by increasing their total amount of message capacity available, or by segregating order flow for different trading desks and clients to avoid latency sensitive applications from competing for a single thread of resources. For example, a TPH may purchase one or more ports for its market making business based on the amount of message traffic needed to support that business, and then purchase separate ports for proprietary trading or customer facing businesses so that those businesses have their own distinct connection, allowing the firm to send multiple messages into the Exchange's trading system in parallel rather than sequentially. Some TPHs that provide direct market access to their customers may also choose to purchase separate ports for different clients as a service for latency sensitive customers that desire the lowest possible latency to improve trading performance. Thus, while a smaller TPH that demands more limited message traffic may connect through a service bureau or other service provider, or may choose to purchase one or two logical ports that are billed at a rate of $750 per month each, a larger market participant with a substantial and diversified U.S. options business may opt to purchase additional ports to support both the volume and types of activity that they conduct on the Exchange. While the Exchange has no way of predicting with certainty the amount or type of logical ports market participants will in fact purchase post-migration, the Exchange anticipated approximately 16% of TPHs to purchase one to two logical ports, and approximately 22% of TPHs to not purchase any logical ports. In December 2019, 13% of TPHs purchased one to two logical ports and 27% have not purchased any logical ports. At the same time, market participants that desire more total capacity due to their business needs, or that wish to segregate order flow by purchasing separate capacity allocations to reduce latency or for other operational reasons, would be permitted to choose to purchase such additional capacity at the same marginal cost. The Exchange believes the proposal to assess an additional Logical and BOE Bulk port fee for incremental usage per logical port is reasonable because the proposed fees are modestly higher than the

[78] The Exchange notes the reduction in market participants that pay the data port fee is due to firm consolidations and acquisitions.

[79] *See* Affiliated Exchange Fee Schedules, Logical Port Fees.

[80] Based on the purchase of a single Market-Maker Trading Permit or Bandwidth Packet.

[81] Based on the purchase of a single Market-Maker Trading Permit or Bandwidth Packet.

proposed Logical Port and BOE Bulk fees and encourage users to mitigate message traffic as necessary. The Exchange notes one of its Affiliated Exchanges has similar implied port fees.[82]

In sum, the Exchange believes that the proposed BOE/FIX Logical Port and BOE Bulk Port fees are appropriate as these fees would ensure that market participants continue to pay for the amount of capacity that they request, and the market participants that pay the most are the ones that demand the most resources from the Exchange. The Exchange also believes that its logical connectivity fees are aligned with the goals of the Commission in facilitating a competitive market for all firms that trade on the Exchange and of ensuring that critical market infrastructure has ''levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets.'' [83]

The Exchange believes waiving the FIX/BOE Logical Port fee for one FIX Logical Port used to access PULSe and Silexx (for FLEX Trading) is reasonable because it will allow all TPHs using PULSe and Silexx to avoid having to pay a fee that they would otherwise have to pay. The waiver is equitable and not unfairly discriminatory because TPHs using PULSe are already subject to a monthly fee for the PULSe Workstation, which the Exchange views as inclusive of fees to access the Exchange. Moreover, while PULSe users today do not require a FIX/CMI Login Id, post-migration, due to changes to the connectivity infrastructure, PULSe users will be required to maintain a FIX Logical Port and as such incur a fee they previously would not have been subject to. Similarly, the Exchange believes that the waiver for Silexx (for FLEX trading) will encourage TPHs to transact business using FLEX Options using the new Silexx System and encourage trading of FLEX Options. Additionally, the Exchange notes that it currently waives the Login Id fees for Login IDs used to access the CFLEX system.

The Exchange believes its proposed fee for Purge Ports is reasonable as it is also in line with the amount assessed for purge ports offered by its Affiliated Exchanges, as well as other exchanges.[84] Moreover, the Exchange believes that offering purge port functionality at the Exchange level promotes robust risk management across the industry, and thereby facilitates investor protection. Some market participants, and, in particular, larger firms, could build similar risk functionality on their trading systems that permit the flexible cancellation of orders entered on the Exchange. Offering Exchange level protections however, ensures that such functionality is widely available to all firms, including smaller firms that may otherwise not be willing to incur the costs and development work necessary to support their own customized mass cancel functionality. The Exchange operates in a highly competitive market in which exchanges offer connectivity and related services as a means to facilitate the trading activities of TPHs and other participants. As the proposed Purge Ports provide voluntary risk management functionality, excessive fees would simply serve to reduce demand for this optional product. The Exchange also believes that the proposed Purge Port fees are not unfairly discriminatory because they will apply uniformly to all TPHs that choose to use dedicated Purge Ports. The proposed Purge Ports are completely voluntary and, as they relate solely to optional risk management functionality, no TPH is required or under any regulatory obligation to utilize them. The Exchange believes that adopting separate fees for these ports ensures that the associated costs are borne exclusively by TPHs that determine to use them based on their business needs, including Market-Makers or similarly situated market participants. Similar to Purge Ports, Spin and GRP Ports are optional products that provide an alternative means for market participants to receive multicast data and request and receive a retransmission of such data. As such excessive fees would simply serve to reduce demand for these products, which TPHs are under no regulatory obligation to utilize. All TPHs that voluntarily select these service options (*i.e.,* Purge Ports, Spin Ports or GRP Ports) will be charged the same amount for the same respective services. All TPHs have the option to select any connectivity option, and there is no differentiation among TPHs with regard to the fees charged for the services offered by the Exchange.

Access Credits

The Exchange believes the proposal to adopt credits for BOE Bulk Ports is reasonable, equitable and not unfairly discriminatory because it provides an opportunity for TPHs to pay lower fees for logical connectivity. The Exchange notes that the proposed credits are in lieu of the current credits that Market-Makers are eligible to receive today for Trading Permits fees. Although only Market-Makers may receive the proposed BOE Bulk Port credits, Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. For example, Market-Makers have a number of obligations, including quoting obligations and fees associated with appointments that other market participants do not have. The Exchange also believes that the proposals provide incremental incentives for TPHs to strive for the higher tier levels, which provide increasingly higher benefits for satisfying increasingly more stringent criteria, including criteria to provide more liquidity to the Exchange. The Exchange believes the value of the proposed credits is commensurate with the difficulty to achieve the corresponding tier thresholds of each program.

First, the Exchange believes the proposed BOE Bulk Port fee credits provided under AVP will incentivize the routing of orders to the Exchange by TPHs that have both Market-Maker and agency operations, as well as incent Market-Makers to continue to provide critical liquidity notwithstanding the costs incurred with being a Market-Maker. More specifically, in the options industry, many options orders are routed by consolidators, which are firms that have both order router and Market-Maker operations. The Exchange is aware not only of the importance of providing credits on the order routing side in order to encourage the submission of orders, but also of the operations costs on the Market-Maker side. The Exchange believes the proposed change to AVP continues to allow the Exchange to provide relief to the Market-Maker side via the credits, albeit credits on BOE Bulk Port fees instead of Trading Permit fees. Additionally, the proposed credits may incentivize and attract more volume and liquidity to the Exchange, which will benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery. While the Exchange has no way of predicting with certainty how many and which TPHs will satisfy the required

[82] *See e.g.,* Cboe C2 Options Exchange Fees Schedule, Logical Connectivity Fees.

[83] *See* Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) (File No. S7–01–13) (Regulation SCI Adopting Release).

[84] *See* Affiliated Exchange Fee Schedules, Logical Port Fees. *See also*, Nasdaq ISE Pricing Schedule, Section 7(C). ISE charges a fee of $1,100 per month for SQF Purge Ports.

criteria to receive the credits, the Exchange had anticipated approximately two TPHs (out of approximately 5 TPHs that are eligible for AVP) to reach VIP Tiers 4 or 5 and consequently earn the BOE Bulk Port fee credits for their respective Market-Maker affiliate. For the month of October 2019, two TPHs received access credits under Tier 5 and no TPHs received credits under Tier 4. The Exchange notes that it believes its reasonable, equitable and not unfairly discriminatory to no longer provider access credits for Market-Makers whose affiliates achieve VIP Tiers 2 or 3 as the Exchange has adopted another opportunity for all Market-Makers, not just Market-Makers that are part of a consolidator, to receive credits on BOE Bulk Port fees (*i.e.,* credits available via the proposed Market-Maker Access Credit Program). More specifically, limiting the credits under AVP to the top two tiers enables the Exchange to provide further credits under the new Market-Maker Access Credit Program. Furthermore, the Exchange notes that it is not required to provide any credits at any tier level.

The Exchange believes the proposed BOE Bulk Port fee credits available for TPHs that reach certain Performance Tiers under the Liquidity Provider Sliding Scale Adjustment Table is reasonable as the credits provide for reduced connectivity costs for those Market-Makers that reach the required thresholds. The Exchange believe it's reasonable, equitable and not unfairly discriminatory to provide credits to those Market-Makers that primarily provide and post liquidity to the Exchange, as the Exchange wants to continue to encourage Market-Makers with significant Make Rates to continue to participate on the Exchange and add liquidity. Greater liquidity benefits all market participants by providing more trading opportunities and tighter spreads.

Moreover, the Exchange notes that Market-Makers with a high Make Rate percentage generally require higher amounts of capacity than other Market-Makers. Particularly, Market-Makers with high Make Rates are generally streaming significantly more quotes than those with lower Make Rates. As such, Market-Makers with high Make Rates may incur more costs than other Market-Makers as they may need to purchase multiple BOE Bulk Ports in order to accommodate their capacity needs. The Exchange believes the proposed credits for BOE Bulk Ports encourages Market-Makers to continue to provide liquidity for the Exchange, notwithstanding the costs incurred by purchasing multiple ports. Particularly, the proposal is intended to mitigate the costs incurred by traditional Market-Makers that focus on adding liquidity to the Exchange (as opposed to those that provide and take, or just take). While the Exchange cannot predict with certainty which Market-Makers will reach Performance Tiers 4 and 5 each month, based on historical performance it anticipated approximately 10 Market-Makers would achieve Tiers 4 or 5. In October 2019, 12 Market-Makers achieved Tiers 4 or 5. Lastly, the Exchange notes that it is common practice among options exchanges to differentiate fees for adding liquidity and fees for removing liquidity.[85]

Bandwidth Packets and CMI CAS Server Fees

The Exchange believes it's reasonable to eliminate Bandwidth Packet fees and the CMI CAS Server fee because TPHs will not pay fees for these connectivity options and because Bandwidth Packets and CAS Servers have been retired and rendered obsolete as part of the migration. The Exchange believes that even though it will be discontinuing Bandwidth Packets, the proposed incremental pricing for Logical Ports and BOE Bulk Ports will continue to encourage users to mitigate message traffic. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all TPHs.

Access Fees

The Exchange believes the restructuring of its Trading Permits is reasonable in light of the changes to the Exchange's connectivity infrastructure in connection with the migration and the resulting separation of bandwidth allowance, logins and appointment costs from each Trading Permit. The Exchange also believes that it is reasonable to harmonize the Exchange's Trading Permit structure and corresponding connectivity options to more closely align with the structures offered at its Affiliated Exchanges once the Exchange is on a common platform as its Affiliated Exchanges.[86] The proposed Trading Permit structure and corresponding fees are also in line with the structure and fees provided by other exchanges. The proposed Trading Permit fees are also equitable and not unfairly discriminatory because the Exchange will apply the same fees to all market participants that use the same type and number of Trading Permits.

With respect to electronic Trading Permits, the Exchange notes that TPHs previously requested multiple Trading Permits because of bandwidth, login or appointment cost needs. As described above, in connection with migration, bandwidth, logins and appointment costs are no longer tied to Trading Permits or Bandwidth Packets and as such, the need to hold multiple permits and/or Bandwidth Packets is obsolete. As such, the Exchange believes the structure to require only one of each type of applicable electronic Trading Permit is appropriate. Moreover, the Exchange believes offering separate marketing making permits for off-floor and on-floor Market-Makers provides for a cleaner, more streamlined approach to trading permits and corresponding fees. Other exchanges similarly provide separate and distinct fees for Market-Makers that operate on-floor vs off-floor and their corresponding fees are similar to those proposed by the Exchange.[87]

The Exchange believes the proposed fee for its MM EAP Trading Permits is reasonable as it is the same fee it assess today for Market-Maker Trading Permits (*i.e.,* $5,000 per month per permit). Additionally, the proposed fee is in line with, and in some cases even lower than, the amounts assessed for similar access fees at other exchanges, including its affiliate C2.[88] The Exchange believes the proposed EAP fee is also reasonable, and in line with the fees assessed by other Exchanges for non-Market-Maker electronic access.[89] The Exchange notes that while the Trading Permit fee is increasing, TPHs overall cost to access the Exchange may be reduced in light of the fact that a TPH no longer must purchase multiple

[85] *See e.g.,* MIAX Options Fees Schedule, Section 1(a), Market Maker Transaction Fees.

[86] For example, the Exchange's affiliate, C2, similarly provides for Trading Permits that are not tied to connectivity, and similar physical and logical port options at similar pricings. *See* Cboe C2 Options Exchange Fees Schedule. Physical connectivity and logical connectivity are also not tied to any type of permits on the Exchange's other options exchange affiliates.

[87] *See e.g.,* PHLX Section 8A, Permit and Registration Fees. *See also,* BOX Options Fee Schedule, Section IX Participant Fees; NYSE American Options Fees Schedule, Section III(A) Monthly ATP Fees and NYSE Arca Options Fees and Charges, OTP Trading Participant Rights. For similar Trading Floor Permits for Floor Market Makers, Nasdaq PHLX charges $6,000; BOX charges up to $5,500 for 3 registered permits in addition to a $1,500 Participant Fee, NYSE Arca charges up to $6,000; and NYSE American charges up to $8,000.

[88] *See e.g.,* Cboe C2 Options Exchange Fees Schedule. *See also,* NYSE Arca Options Fees and Charges, General Options and Trading Permit (OTP) Fees, which assesses up to $6,000 per Market Maker OTP and NYSE American Options Fee Schedule, Section III. Monthly ATP Fees, which assess up to $8,000 per Market Maker ATP. *See also,* PHLX Section 8A, Permit and Registration Fees, which assesses up to $4,000 per Market Maker Permit.

[89] *See e.g.,* PHLX Section 8A, Permit and Registration Fees, which assesses up to $4,000 per Permit for all member and member organizations other than Floor Specialists and Market Makers.

Trading Permits, Bandwidth Packets and Login Ids in order to receive sufficient bandwidth and logins to meet their respective business needs. To illustrate the value of the new connectivity infrastructure, the Exchange notes that the cost that would be incurred by a TPH today in order to receive the same amount of order capacity that will be provided by a single Logical Port post-migration (*i.e.,* 5,000 orders per second), is approximately 98% higher than the cost for the same capacity post-migration. The following examples further demonstrate potential cost savings/value added for an EAP holder with modest capacity needs and an EAP holder with larger capacity needs:

	Current fee structure	Post-migration fee structure
TPH that holds 1 EAP, no Bandwidth Packets and 1 CMI login		
EAP	$1,600	$3,000.
CMI Login/Logical Port	$750	$750.
Bandwidth Packets	0	N/A.
Total Bandwidth Available	30 orders/sec	5,000 orders/sec.
Total Cost	$2,350	$3,750.
Total Cost per message	$78.33/order/sec	$0.75/order/sec.
TPH that holds 1 EAP, 4 Bandwidth Packets and 15 CMI logins		
EAP	$1,600	$3,000.
CMI Login/Logical Port	$11,250 (15@750)	$750.
Bandwidth Packets	$6,400 (4@$1,600)	N/A.
Total Bandwidth Available	150 orders/sec	5,000 orders/sec.
Total Cost	$19,250	$3,750.
Total Cost per message	$128.33/order/sec	$0.75/order/sec.

The Exchange believes the proposal to adopt a new Clearing TPH Permit is reasonable because it offers TPHs that only clear transactions of TPHs a discount. Particularly, Clearing TPHs that also submit orders electronically to the Exchange would purchase the proposed EAP at $3,000 per permit. The Exchange believe it's reasonable to provide a discount to Clearing TPHs that only clear transactions and do not otherwise submit electronic orders to the Exchange. The Exchange notes that another exchange similarly charges a separate fee for clearing firms.[90]

The Exchange believes the proposed fee structure for on-floor Market-Makers is reasonable as the fees are in line with those offered at other Exchanges.[91] The Exchange believes that the proposed fee for MM Floor Permits as compared to MM EAPs is reasonable because it is only modestly higher than MM EAPs and Floor MMs don't have other costs that MM EAP holders have, such as MM EAP Appointment fees.

The Exchange believes its proposed fees for Floor Broker Permits are reasonable because the fees are similar to, and in some cases lower than, the fees the Exchange currently assesses for such permits. Specifically, based on the number of Trading Permits TPHs held upon migration, 60% of TPHs that hold Floor Broker Trading Permits will pay lower Trading Permit fees. Particularly, any Floor Broker holding ten or less Floor Broker Trading Permits will pay lower fees under the proposed tiers as compared to what they pay today. While the remaining 40% of TPHs holding Floor Broker Trading Permits (who each hold between 12–21 Floor Broker Trading Permits) will pay higher fees, the Exchange notes the monthly increase is de minimis, ranging from an increase of 0.6%–2.72%.[92]

The Exchange believes the proposed ADV Discount is reasonable because it provides an opportunity for Floor Brokers to pay lower FB Trading Permit fees, similar to the current rebate program offered to Floor Brokers. The Exchange notes that while the new ADV Discount program includes only customer volume (''C'' origin code) as compared to Customer and Professional Customer/Voluntary Professional, the amount of Professional Customer/Voluntary Professional volume was de minimis and the Exchange does not believe the absence of such volume will have a significant impact.[93] Additionally, the Exchange notes that while the ADV requirements under the proposed ADV Discount program are higher than are required under the current rebate program, the proposed ADV Discount counts volume from all products towards the thresholds as compared to the current rebate program which excludes volume from Underlying Symbol List A (except RLG, RLV, RUI, and UKXM), DJX, XSP, and subcabinet trades. Moreover, the ADV Discount is designed to encourage the execution of orders in all classes via open outcry, which may increase volume, which would benefit all market participants (including Floor Brokers who do not hit the ADV thresholds) trading via open outcry (and indeed, this increased volume could make it possible for some Floor Brokers to hit the ADV thresholds). The Exchange believes the proposed discounts are equitable and not unfairly discriminatory because all Floor Brokers are eligible. While the Exchange has no way of predicting with certainty how many and which TPHs will satisfy the various thresholds under the ADV Discount, the Exchange anticipated approximately 3 Floor Brokers to receive a rebate under the program. In December 2019, 2 Floor Brokers received a rebate under the program.

The Exchange believes its proposed MM EAP Appointment fees are reasonable in light of the Exchange's elimination of appointment costs tied to Trading Permits. Other exchanges also offer a similar structure with respect to fees for appointment classes.[94] Additionally, the proposed MM EAP Appointment fee structure results in approximately 36% electronic MMs

[90] *See e.g.,* NYSE Arca Options Fees and Charges, General Options and Trading Permit (OTP) Fees and NYSE American Options Fee Schedule, Section III. Monthly ATP Fees.

[91] *See e.g.,* PHLX Section 8A, Permit and Registration Fees, which assesses $6,000 per permit for Floor Specialists and Market Makers.

[92] The Floor Brokers whose fees are increasing have each committed to a minimum number of permits and therefore currently receive the rates set forth in the current Floor Broker TP Sliding Scale.

[93] Furthermore, post-migration the Exchange will not have Voluntary Professionals.

[94] *See e.g.,* PHLX Section 8. Membership Fees, B, Streaming Quote Trader (''SQT'') Fees and C. Remote Market Maker Organization (RMO) Fee.

paying lower fees for trading permit and appointment costs. For example, in order to have the ability to make electronic markets in every class on the Exchange, a Market-Maker would need 1 Market-Maker Trading Permit and 37 Appointment Units post-migration. Under, the current pricing structure, in order for a Market-Maker to quote the entire universe of available classes, a Market-Maker would need 33 Appointment Credits, thus necessitating 33 Market-Maker Trading Permits. With respect to fees for Trading Permits and Appointment Unit Fees, under the proposed pricing structure, the cost for a TPH wishing to quote the entire universe of available classes is approximately 29% less (if they are not eligible for the MM TP Sliding Scale) or approximately 2% less (if they are eligible for the MM TP Sliding Scale). To further demonstrate the potential cost savings/value added, the Exchange is providing the following examples comparing current Market-Maker connectivity and access fees to projected connectivity and access fees for different scenarios. The Exchange notes that the below examples not only compare Trading Permit and Appointment Unit costs, but also the cost incurred for logical connectivity and bandwidth. Particularly, the first example demonstrates the total minimum cost that would be incurred today in order for a Market-Maker to have the same amount of capacity as a Market-Maker post-migration that would have only 1 MM EAP and 1 Logical Port (*i.e.,* 15,000 quotes/3 sec). The Exchange is also providing examples that demonstrate the costs of (i) a Market-Maker with small capacity needs and appointment unit of 1.0 and (ii) a Market-Maker with large capacity needs and appointment cost/unit of 30.0:

	Current fee structure	Post-migration fee structure
Market-Maker that needs capacity of 15,000/quotes/3 seconds		
MM Permit/MM EAP	$5,000	$5,000.
Appointment Unit Cost	N/A (1 appointment cost)	$0 (1 appointment unit).
CMI Login/Logical Port	$750 [95]	$750.
Bandwidth Packets	$5,500 (2@$2,750)	N/A.
Total Bandwidth Available	15,000 quotes/3 sec	15,000 quotes/3 sec.
Total Cost	$11,250	$5,750.
Total Cost per message allowed	$0.75/quote/3 sec	$0.38/quote/3 sec.
Market Maker that needs capacity of no more than 5,000 quotes/3 secs		
MM Permit/MM EAP	$5,000	$5,000.
Appointment Unit Cost	N/A (1 appointment cost)	$0 (1 appointment unit).
CMI Login/Logical Port	$750	$750.
Bandwidth Packets	0	N/A.
Total Bandwidth Available	5,000 quotes/3 sec	15,000 quotes/3 sec.
Total Cost	$5,750	$5,750.
Total Cost per message allowed	$1.15/quote/3 sec	$0.38/quote/3 sec.
Market-Maker that needs 30 Appointment Units and capacity of 300,000 quotes/3 sec		
MM Permits/MM EAP	$105,000 (30 MM Permits assumes eligible for MM TP Sliding Scale) [96].	$5,000.
Appointment Units Cost	N/A (30 appointment costs)	$95,500 (30 appointment units).
CMI Logins/BOE Bulk Port	$3,000 (4@$750) [97]	$3,000 (2 BOE Bulk@$1,500).
Bandwidth Packets	$82,500(30@$2750)	N/A.
Total Bandwidth Available	300,000 quotes/3 sec	* 450,000 quotes/3 sec.
Total Cost	$190,500	$103,500.
Total Cost per message allowed	$0.63/quotes/3 sec	$0.23/quote/3 sec.

* Possible performance degradation at 15,000 messages per second.

The Exchange believes its proposal to provide separate fees for Tier Appointments for MM EAPs and MM Floor Permits as the Exchange will be issuing separate Trading Permits for on-floor and off-floor market making as discussed above. The proposal to eliminate the volume threshold for the electronic SPX Tier Appointment fee is reasonable as no TPHs in the past several months have electronically traded more than 1 SPX contract or less than 100 SPX contracts per month and therefore will not be negatively impacted by the proposed change, and because it aligns the electronic SPX Tier Appointment with the floor SPX Tier Appointment, which has no volume threshold. The Exchange believes the proposal to increase the electronic volume thresholds for VIX and RUT are reasonable as those that do not regularly trade VIX or RUT in open-outcry will continue to not be assessed the fee. In fact, any TPH that executes more than 100 contracts but less than 1,000 in the respective classes will no longer have to pay the proposed Tier Appointment fee. As noted above, the Exchange is not proposing to change the amounts assessed for each Tier Appointment Fee. The proposed change is equitable and not unfairly discriminatory because it will apply uniformly to all TPHs.

Trading Permit Holder Regulatory Fee

The Exchange believes it's reasonable to eliminate the Trading Permit Holder Regulatory fee because TPHs will not pay this fee and because the Exchange is restructuring its Trading Permit structure. The Exchange notes that although it will less closely be covering the costs of regulating all TPHs and performing its regulatory responsibilities, it still has sufficient funds to do so. The proposed change is equitable and not unfairly

[95] The maximum quoting bandwidth that may be applied to a single Login Id is 80,000 quotes/3 sec.

[96] For simplicity of the comparison, this assumes no appointments in SPX, VIX, RUT, XEO or OEX (which are not included in the TP Sliding Scale).

[97] Given the bandwidth limit per Login Id of 80,000 quotes/3 sec, example assumes Market-Maker purchases minimum amount of Login IDs to accommodate 300,000 quotes/3 sec.

discriminatory because it will apply uniformly to all TPHs.

The Exchange believes corresponding changes to eliminate obsolete language in connection with the proposed changes described above and to relocate and reorganize its fees in connection with the proposed changes maintain clarity in the Fees Schedule and alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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.

With respect to intra-market competition, the Exchange does not believe that the proposed rule change would place certain market participants at the Exchange at a relative disadvantage compared to other market participants or affect the ability of such market participants to compete. As stated above, the Exchange does not believe its proposed pricing will impose a barrier to entry to smaller participants and notes that its proposed connectivity pricing is associated with relative usage of the various market participants. For example, market participants with modest capacity needs can buy the less expensive 1 Gb Physical Port and utilize only one Logical Port. Moreover, the pricing for 1 Gb Physical Ports and FIX/BOE Logical Ports are no different than are assessed today (*i.e.,* $1,500 and $750 per port, respectively), yet the capacity and access associated with each is greatly increasing. While pricing may be increased for larger capacity physical and logical ports, such options provide far more capacity and are purchased by those that consume more resources from the network. Accordingly, the proposed connectivity fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation reflects the network resources consumed by the various size of market participants—lowest bandwidth consuming members pay the least, and highest bandwidth consuming members pays the most, particularly since higher bandwidth consumption translates to higher costs to the Exchange.

The Exchange also does not believe that the proposed rule change will result in any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed in the Statutory Basis section above, options market participants are not forced to connect to (or purchase market data from) all options exchanges, as shown by the number of TPHs at Cboe and shown by the fact that there are varying number of members across each of Cboe's Affiliated Exchanges. The Exchange operates in a highly competitive environment, and its ability to price access and connectivity is constrained by competition among exchanges and third parties. As discussed, there are other options markets of which market participants may connect to trade options. There is also a possible range of alternative strategies, including routing to the exchange through another participant or market center or taking the exchange's data indirectly. For example, there are 15 other U.S. options exchanges, which the Exchange must consider in its pricing discipline in order to compete for market participants. In this competitive environment, market participants are free to choose which competing exchange or reseller to use to satisfy their business needs. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 written 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 [98] and paragraph (f) of Rule 19b–4 [99] 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–2020–048 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–2020–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2020–048, and should be submitted on or before June 26, 2020.

[98] 15 U.S.C. 78s(b)(3)(A).

[99] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[100]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12165 Filed 6–4–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88978; File No. SR–CBOE–2020–049]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 8.16 and Rule 9.2 To Temporarily Extend the Filing Deadline for Certain Supervision-Related Reports

June 1, 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 May 29, 2020, Cboe Exchange, Inc. (''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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b-4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 8.16 and Rule 9.2 to temporarily extend the filing requirements for certain supervision-related reports, currently given an extension through June 1, 2020, to June 30, 2020. 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://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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Given current market conditions, the Exchange proposes to provide its Trading Permit Holders (''TPHs'') temporary relief from filing certain supervision-related reports pursuant to Rule 8.16 (Supervision) and Rule 9.2 (Supervision of Accounts).

The Exchange has been closely monitoring the current situation regarding the novel coronavirus (''COVID–19'') pandemic. The Exchange understands COVID–19 has placed stress on market participants' information technology infrastructure and the required deployment of significant resources, including to implement and continuously adapt business continuity plans. On March 11, 2020, the World Health Organization characterized COVID–19 as a pandemic and to slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses, all of which are largely still in place for the foreseeable future. Indeed, in response to the pandemic, the Exchange has taken various actions to allow it to maintain fair and orderly markets, including the closure of its trading floor, which will remain inoperable into June 2020.[5] The Exchange also notes that in response to COVID–19, the Financial Industry Reporting Authority (''FINRA'') recently reissued temporary relief for member firms by, among other things, extending the deadline for submitting their supervision-related reports (FINRA Rule 3120 Report and FINRA Rule 3130 certification) from their initial extension deadlines of June 1, 2020[6] to June 30, 2020.[7] The Exchange notes, too, that other options exchanges that had previously extended the supervisory report deadlines from April 1 to June 1 for their members,[8] also plan to submit similar filings to, again, extend their deadlines through June 30, 2020.

By way of background, Rule 8.16(g)(2) provides that by April 1 of each year each Trading Permit Holder shall submit to the Exchange written report on the Trading Permit Holder's supervision and compliance effort during the preceding year and on the adequacy of the Trading Permit Holder's ongoing compliance processes and procedures, and Rule 9.2(g) provides that by April 1 of each year each TPH organization that conducts a non-Trading Permit Holder customer business shall submit to the Exchange a written report on the TPH organization's supervision and compliance effort during the preceding year and on the adequacy of the TPH organization's ongoing compliance processes and procedures, and (3) Rule 9.2(h) provides that by April 1 of each year, each TPH organization shall submit a copy of the report that paragraph (g) (of Rule 9.2) requires the TPH organization to prepare to its one or more control persons or, if the TPH organization has no control person, to the audit committee of its board of directors or its equivalent committee or group. Both Rules currently provide relief to TPHs and their employees by extending these deadlines to June 1, 2020.[9] However, as COVID–19 remains an ongoing pandemic, to meet the current June 1 deadlines in Rules 8.16 and 9.2, TPH personnel would have to divide their efforts and resources that are otherwise necessary to address continued disruptions and stresses as a result of the ongoing COVID–19 pandemic. Therefore, the Exchange proposes to extend the filing deadline through June 30, 2020, thus allowing TPH personnel that are tasked with organizing, compiling and filing such reports, but are also tasked with maintaining critical operations and sustainable business

[100] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Tradedesk Update No. C2020031204 (March 12, 2020) Novel Coronavirus Update, Trading Floor Closure; *and* Tradedesk Update No. C2020052603 (May 26, 2020) Cboe Options Trading Floor Re-Opening.

[6] *See* FINRA Regulatory Notice 20–08 (March 9, 2020) available at *https://www.finra.org/rules-guidance/notices/20-08.*

[7] *See* FINRA Regulatory Notice 20–08, FAQs, Supervision (May 19, 2020) available at *https://www.finra.org/rules-guidance/key-topics/covid-19/faq#supe.*

[8] *See* Securities Exchange Act Release Nos. 88524 (March 31, 2020), 85 FR 19198 (April 6, 2020) (SR–ISE–2020–14); and 88527 (March 31, 2020), 85 FR 19190 (April 6, 2020) (SR–Phlx–2020–16).

[9] *See* Securities Exchange Act No. 88528 (March 31, 2020), 85 FR 19196 (April 6, 2020) (SR–CBOE–2020–029).

continuity plans, and otherwise adjusting the TPH's trading operations in line with evolving market conditions and initiatives to address such conditions to focus their attention on those immediate needs.

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposed rule change will allow the Exchange to extend temporary relief to its TPHs by issuing another extension of certain supervisory reporting deadlines from June 1, 2020 to June 30, 2020 in light of the ongoing COVID–19 crisis. The Exchange understands this pandemic has caused, and continues to cause, stress on market participants' information technology infrastructure and the deployment of significant resources to address ongoing disruptions and continued stresses. By allowing the Exchange to re-extend the deadlines for filing certain supervision related reports in Rules 8.16 and 9.2, the Exchange believes the proposed rule will allow TPH personnel, who would normally be tasked with organizing and compiling such reports, to focus their attention on maintaining critical operations and sustainable business continuity plans, and otherwise adjusting their trading operations in line with evolving market conditions and initiatives in response to the ongoing COVID–19 pandemic. The Exchange also believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system because, as noted above, FINRA has also re-extended the time for their members to file supervision-related reports from June 1, 2020 to June 30, 2020.[13] Additionally, as indicated above, other options exchanges that had previously extended the supervisory report deadlines from April 1 to June 1 for their members,[14] plan to submit similar filings to re-extend their deadlines through June 30, 2020.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues. The Exchange does not believe the proposed rule would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, because the additional June 30, 2020 extension for supervision-related reports in Rules 8.16 and 9.2 will apply equally to all TPHs. The Exchange does not believe that the proposed rule change would impose any burden on intermarket competition because it relates only to the extension of the filing deadline for supervision-related reports. Additionally, and as stated above, FINRA has recently notified its members that the filing deadline for their supervision-related reports has again been extended from June 1, 2020 to June 30, 2020,[15] and other options exchanges plan to file for the same relief through June 30, 2020, as well.

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 [16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [18] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [19] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that the proposed rule change would allow the Exchange, in light of the COVID–19 pandemic, to provide temporary relief for TPHs by extending the deadline for supervision-related reports in Rules 8.16 and 9.2 from June 1, 2020 to June 30, 2020, consistent with the extension FINRA has provided its members for supervision-related reports and certifications required pursuant to FINRA Rule 3120 and FINRA Rule 3130. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[20]

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

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] *See supra* note 7.

[14] *See supra* note 8.

[15] *See supra* note 7.

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] 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).

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–CBOE–2020–049 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–2020–049. 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–2020–049 and should be submitted on or before June 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12158 Filed 6–4–20; 8:45 am]

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88981; File No. SR–NYSENAT–2020–19]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Price List Related to Co-Location Services

June 1, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 18, 2020, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List related to co-location services with respect to connectivity to the ICE Data Global Index and to waive any change fees that a User would otherwise incur as a result of the proposed change. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location[4] services offered by the Exchange with respect to connectivity to the ICE Data Global Index (''GIF'') and to waive any change fees that a User would otherwise incur as a result of the proposed change.

Proposed Change

The Exchange offers Users[5] connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds'').[6] The list of Third Party Data Feeds is set forth in the Price List, and includes connectivity to the GIF for a monthly connectivity fee of $100.[7]

ICE, which publishes the GIF, announced to its customers that connect to the GIF that it will no longer offer the GIF as a stand-alone product. Accordingly, the Exchange proposes to cease offering connectivity to the GIF once it is no longer available. The Exchange has been informed by ICE that cessation is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in May 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates a data center in Mahwah, New Jersey (the ''data center''), from which the Exchange provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id.,* at note 9. As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (collectively, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–46, SR–NYSEAmer–2020–40, SR–NYSEArca–2020–49, and SR–NYSECHX–2020–17.

[6] *See id.* at 26323.

[7] The Exchange has an indirect interest in the GIF because ICE is the Exchange's ultimate parent. *See id.* at note 4.

Users are subject to a change fee if they request a change to one or more existing co-location services.[8] The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

In order to implement the proposed change, the Exchange proposes to make the following changes to the section entitled ''Connectivity to Third Party Data Feeds'':

• In the first paragraph and in the table of Third Party Data Feeds, add an asterisk after ''ICE Data Global Index.''

• Following the table of Third Party Data Feeds, add the following text:

* ICE will cease to offer the GIF as a stand-alone product, which the Exchange has been informed by ICE is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice. Any change fees that a User would otherwise incur as a result of the proposed change will be waived.

The GIF includes the values of various indices and exchange traded product data.[9] Based on information published by ICE Data Services, all the data in the GIF was already available on the ICE Data Services Consolidated Feed (''Consolidated Feed'').[10] The Exchange offers connectivity to the Consolidated Feed, and does not propose to change the price for such connectivity. In addition, the Exchange's connectivity to the GIF and the Consolidated Feed should have approximately the same latency.

Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Price List is applied uniformly to all Users.

Currently, there are seven Users that have connectivity to the GIF, and so would be affected by the change. If any of them wish to continue having connectivity to the information in the GIF, they could connect to the Consolidated Feed, which none of them do presently. The monthly cost for connectivity to the Consolidated Feed depends on the size of the bandwidth utilized. If a User opts to connect to the Consolidated Feed to connect to the information in the GIF, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[11]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable and Equitable

The Exchange believes that the proposed rule change is reasonable and equitable for the following reasons.

The Exchange believes that it is reasonable and an equitable allocation of its fees and credits to add a note to its Price List stating that ICE will cease to offer the GIF as a stand-alone product, as the Exchange will no longer be able to offer the service once that occurs.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through IDS or from a third party provider. A User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that it is reasonable and equitable that it waive any change fees that a User would otherwise incur as a result of the proposed change, as Users would have no choice but to terminate connectivity to the GIF. The fee waiver would help to alleviate any burden related to the change.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer something that it cannot provide because the relevant feed has been discontinued. Adding the proposed note to its Price List would reduce any potential ambiguity and provide

[8] *See id.,* at 26320.

[9] The Exchange understands that some of the indices may include Exchange or Affiliate SRO data as underlying components, but the GIF does not include those underlying components or other information directly from the Exchange and Affiliate SROs.

[10] *See* ''Consolidated Data Feed Coverage List—Indices and Indicators'' at *https://www.theice.com/market-data/connectivity-and-feeds/consolidated-feed/coverage-list.*

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: As a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF. The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

Adding the proposed note to the Price List would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

The Exchange believes that the proposed change is necessary and appropriate. Adding the proposed note to the Price List would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete and provide a timeline for the change.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the

[14] 15 U.S.C. 78f(b)(8).

[15] *See* 70 FR 37496, *supra* note 11.

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that such waiver would be consistent with the protection of investors and the public interest because it would allow the Exchange to waive the change fee sooner. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would permit the Exchange, without undue delay, to cease offering the GIF when it becomes unavailable, provide notice to customers and waive the change fee. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2020–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2020–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2020–19 and should be submitted on or before June 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12162 Filed 6–4–20; 8:45 am]

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[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88983; File No. SR–CboeBZX–2020–043]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fee Schedule

June 1, 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 May 19, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange,'' ''Cboe,'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its fee schedule. 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 proposes to amend its fee schedule applicable to its equities trading platform. Specifically, the Exchange proposes to amend the existing Tape B Volume and Quoting Tier, add a new Tape B Volume and Quoting Tier, make a cleanup change to the introductory language under the Tape B Volume and Quoting Tiers, and to add a new LMM Add Volume Tier, effective May 1, 2020.[3]

The Exchange first notes that its listing business operates in a highly-competitive market in which market participants, which includes issuers of securities, Lead Market Makers (''LMMs''), and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to enroll in LMP Securities[4] and participate as LMMs in the Exchange's LMM Program,[5] which the Exchange believes will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange.

Tape B Volume and Quoting Tiers

The Exchange currently offers one Tape B Volume and Quoting Tier under footnote 13, which provides an additional rebate of $0.0001 per share for orders that add liquidity in Tape B securities where a Member is enrolled in at least 100 LMP Securities, at least 10 of which must be BZX-listed, for which it meets the following criteria for at least 50% of the trading days in the applicable month: (1) Member has an NBBO Time[6] greater than or equal to 15% or NBBO Size Time[7] is greater than or equal to 25%; and (2) Member has a Displayed Size Time[8] greater than or equal to 90%. All Members are eligible to enroll in LMP Securities and are eligible for the current Tape B Volume and Quoting Tier. Such rebates are applicable to orders that add liquidity which are appended with fee code B. The Exchange proposes to make several changes to the Tape B Volume and Quoting Tier and to add a second tier.

First, the Exchange proposes to require that a Member is enrolled in and meets the requirements for at least 50 BZX-listed LMP Securities in order to receive the additional Tier 1 rebate. This marks a reduction in the total number of LMP Securities that a Member must be enrolled in and meet the requirements for (from 100 to 50) and an increase in the number of BZX-listed LMP Securities that a Member must be enrolled in and meet the requirements for (from 10 to 50).[9] Second, the Exchange is proposing to additionally require that a Member adds a Tape B ADV[10] of greater than or equal to 0.15% of the TCV[11] in order to receive the additional Tier 1 rebate.

The Exchange is also proposing to add a Tier 2 rebate to the Tape B Volume and Quoting Tiers where a Member is enrolled in at least 100 BZX-listed LMP Securities for which it meets the following criteria for at least 50% of the trading days in the applicable month: (1) Member has an NBBO Time greater than or equal to 15% or an NBBO Size Time greater than or equal to 25%; and (2) Member has a Displayed Size Time greater than or equal to 90%; and (ii) Member adds a Tape B ADV greater than or equal to 0.30% of the TCV.

Finally, the Exchange is also proposing to make a cleanup change to eliminate the introductory language under footnote 13 that reads: ''LMMs in BZX-listed securities will receive the following additional rebate when adding displayed liquidity in all Tape B securities, except that such additional rebates will not be applied to the rebates set forth in footnote 14 part A.'' The Exchange is proposing to delete this language because it does not apply to the current LMM Liquidity Provision Rates. Specifically, prior to the Exchange implementing the new LMM Liquidity Provision Rates as part of the Original LMM Filing, the Exchange offered enhanced rebates to LMMs for added liquidity on a per transaction basis in their LMM Securities. The introductory language was intended to make clear that LMMs were not eligible for the Tape B Volume Tier in addition to the enhanced LMM rebates.[12] Since the implementation of the Original LMM Filing, LMMs receive a daily payment for meeting certain Minimum Performance Standards instead of an enhanced rebate (as further described below) and, as such, the language is no longer applicable.

LMM Add Volume Tier

Under the LMM Program, the Exchange offers daily incentives for LMMs securities listed on the Exchange for which the LMM meets certain Minimum Performance Standards.[13] Such daily incentives are determined based on the number of Cboe-listed securities for which the LMM meets

[3] The Exchange initially filed the proposed fee changes on May 1, 2020 (SR–CboeBZX–2020–039). On May 12, 2020, the Exchange withdrew that filing and submitted a subsequent filing (SR–CboeBZX–2020–041). On May 19, 2020, the Exchange withdrew that filing and submitted this proposal.

[4] ''LMP Securities'' means a list of securities included in the Liquidity Management Program, the universe of which will be determined by the Exchange and published in a circular distributed to Members and on the Exchange's website. Such LMP Securities will include all Cboe-listed ETPs and certain non-Cboe-listed ETPs for which the Exchange wants to incentivize Members to provide enhanced market quality. All Cboe-listed securities will be LMP Securities immediately upon listing on the Exchange. The Exchange will not remove a security from the list of LMP Securities without 30 days prior notice. *See* Cboe BZX U.S. Equities Exchange Fee Schedule.

[5] *See* Securities Exchange Act Release No. 86213 (June 27, 2019), 84 FR 31951 (July 3, 2019) (the ''Original LMM Filing'').

[6] ''NBBO Time'' means the average of the percentage of time during regular trading hours during which the Member maintains at least 100 shares at each of the NBB and NBO. *See* Cboe BZX U.S. Equities Exchange Fee Schedule.

[7] ''NBBO Size Time'' means the percentage of time during regular trading hours during which there are size-setting quotes at the NBBO on the Exchange. *See* Cboe BZX U.S. Equities Exchange Fee Schedule.

[8] ''Displayed Size Time'' means the percentage of time during regular trading hours during which the Member maintains at least 2,500 displayed shares on the bid and separately maintains at least 2,500 displayed shares on the offer that are priced no more than 2% away from the NBB and NBO, respectively. *See* Cboe BZX U.S. Equities Exchange Fee Schedule.

[9] The Exchange notes that all BZX-listed securities are by definition LMP Securities.

[10] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. The Exchange excludes from its calculation of ADV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours, on any day with a scheduled early market close and on the last Friday in June (the ''Russell Reconstitution Day''). Routed shares are not included in ADAV or ADV calculation.

[11] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day.

[12] See Securities Exchange Act Release No. 79064 (October 6, 2016), 81 FR 70718 (October 13, 2016).

[13] As defined in Rule 11.8(e)(1)(E), the term ''Minimum Performance Standards'' means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, *see* Original LMM Filing.

such Minimum Performance Standards and the average auction volume across such securities. Generally speaking, the more LMM Securities [14] for which the LMM meets the Minimum Performance Standards and the higher the auction volume across those securities, the greater the total daily payment to the LMM.

In order to further incentivize Members to enroll and participate in the LMM Program, the Exchange is also proposing to add a new LMM Add Volume Tier. Under this proposed new tier, LMMs in BZX-listed securities will receive an additional $0.0001 rebate per share for adding displayed liquidity where the LMM: (1) Adds an ADV greater than or equal to 0.20% of the TCV; (2) has an average aggregate daily auction volume in LMM Securities greater than or equal to 500,000; and (3) is enrolled in at least 75 LMM Securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] [sic] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that its listing business operates in a highly-competitive market in which market participants, which includes issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to enroll in LMP Securities and participate as LMMs in the Exchange's LMM Program, which the Exchange believes will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange.

Tape B Volume and Quoting Tiers

The Exchange believes that the proposed changes to the Tape B Volume and Quoting Tiers are consistent with the Act and represent a reasonable, equitable, and not unfairly discriminatory means to incentivize liquidity provision in ETPs listed on the Exchange. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently [18] for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as an ETP listing venue. Specifically, the Exchange believes that the proposal is reasonable because it believes that increasing the number of BZX-listed LMP Securities from 10 to 50 will ensure that Members are meeting the NBBO Time or NBBO Size Time and the Displayed Size Time requirements in BZX-listed securities rather than in other LMP Securities will incentivize enhanced market quality in BZX-listed ETPs. Further, adding the requirement that a Member adds a Tape B ADV greater than or equal to 0.15% of the TCV will incentivize Members to transact in Tape B securities, which includes all BZX-listed securities, on the Exchange. Adding Tier 2 with an increased additional rebate for Members that are enrolled in at least 100 BZX-listed LMP Securities and add a Tape B ADV greater than or equal to 0.30% of the TCV (while applying the same NBBO Time or NBBO Size Time and Displayed Size Time requirements as Tier 1) will provide further incentive for Members to enroll in additional BZX-listed LMP Securities and transact in Tape B Securities. The combination of the two requirements in both Tier 1 and Tier 2 will encourage both quoting and executions on the Exchange in BZX-listed securities, which the Exchange believes is both reasonable and equitable because it will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange. Further, the Exchange believes that any negative impact to non-BZX-listed LMP Securities is not unreasonable and will be outweighed by the positive impact to the Exchange's listing program for several reasons. As noted throughout, the listing business operates in a highly-competitive market in which competing listing venues offer liquidity provision incentive programs for their own securities,[19] similar to the LMM Program and the Tape B Quoting Tiers. To the extent that the market quality in the security is negatively impacted, competitive forces would generally dictate that the primary listing venue enhance their own liquidity provision programs or that the security would transfer to a different primary listing venue.

The Exchange believes that the proposal represents an equitable allocation of fees and other charges because the Tape B Volume and Quoting Tiers are available equally to all Members and all Members are eligible to enroll in LMP Securities. The Exchange anticipates at least three and as many as eight firms will meet the Tape B Volume and Quoting Tiers 1 and 2. Further, the Exchange believes that the proposal represents an equitable allocation of fees and other charges and is not unreasonably discriminatory because enrolling in LMP Securities is open to all Members and any Member that wishes to receive the Tape B Volume and Quoting Tiers must meet the proposed quoting and execution standards in order to receive the enhanced rebates, as outlined above. Where a Member does not meet the requirements, they will not receive the enhanced rebates. Further and as noted throughout, the Tape B Volume and Quoting Tiers are designed to enhance market quality in BZX-listed securities and to make the Exchange more competitive as an ETP listing venue.

Finally, the Exchange believes that the proposal to eliminate the introductory language under the Tape B Volume Tiers is reasonable, equitable, and non-discriminatory in that it is designed to make the fee schedule

[14] As defined in Rule 11.8(e)(1)(D), the term ''LMM Security'' means a Listed Security that has an LMM. As defined in Rule 11.8(e)(1)(B), the term ''Listed Security'' means any ETP or any Primary Equity Security or Closed-End Fund listed on the Exchange pursuant to Rule 14.8 or 14.9.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] For example, 16 ETPs transferred their listings to the Exchange on May 13, 2019. *See http://ir.cboe.com/~/media/Files/C/CBOE-IR-V2/press-release/2019/cboe-welcomes-16-barclays-etns.pdf.*

[19] *See* NYSE Arca, Inc. Rule 6.82-O related to Lead Market Makers and Nasdaq Stock Market LLC Section 114 related to the Designated Liquidity Provider Program.

clearer because it is eliminating old language that is no longer applicable.

LMM Add Volume Tier

The Exchange believes that the proposed addition of the LMM Add Volume Tier is consistent with the act and represents a reasonable, equitable, and not unfairly discriminatory means to incentivize liquidity provision in BZX-listed securities. Specifically, the Exchange believes that the proposal is reasonable, equitable, and not unfairly discriminatory to offer the LMM Add Volume Tier to LMMs and not other Members because it will enhance market quality in Cboe-listed securities by incentivizing LMMs to take on additional securities listed on the Exchange (by requiring both a minimum Average Aggregate Daily Auction Volume in LMM Securities of greater than or equal to 500,000 and enrollment in at least 75 LMM Securities) and encouraging liquidity provision on the Exchange (by requiring that a Member adds an ADV of greater than or equal to 0.20% of TCV). While the proposed enhanced rebate applies only to LMMs, the Exchange believes that the proposal is equitable and not unreasonably discriminatory because registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Further, such LMMs must meet rigorous Minimum Performance Standards [20] and, where an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular LMM qualifying for the proposed tier, the Exchange anticipates at least one LMM meeting, or being reasonably able to meet, the proposed criteria; however, the proposed tier is open to any LMM that satisfies the tier's criteria. The Exchange believes that the proposed tier could provide an incentive for other Members to enroll as an LMM, to take on additional LMM Securities, and to add additional liquidity on the Exchange to qualify for the proposed tier.

The Exchange believes that it is fair and reasonable to offer enhanced rebates to LMMs that meet the proposed tier because of the significant commitment to the Exchange's LMM Program and liquidity provision on the Exchange made by such LMM in order to meet the tier. The Exchange intends to implement the enhanced rebate as a means to incentivize Members to both enroll and participate in the LMM Program and then to further take on additional LMM Securities and believes that this new tier combined with the existing structure of the LMM Program will have such an effect. As such, the Exchange believes that the proposal represents an equitable allocation of payments.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to enroll in LMP Securities and to become LMMs in BZX-listed securities and as a listing venue by enhancing market quality in BZX-listed securities. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently [21] for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as a listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers, LMMs, other Members, or competing listing venues to maintain their competitive standing. The Exchange also notes that the proposed change is intended to enhance market quality in BZX-listed securities and other listed securities, to the benefit of all investors in such BZX-listed securities. The Exchange does not believe the proposed amendment would burden intramarket competition as it would be available to all Members uniformly. Registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Further, if an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and paragraph (f) of Rule 19b–4 [23] 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–CboeBZX–2020–043 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–2020–043. 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

[20] As defined in Rule 11.8(e)(1)(D), the term ''Minimum Performance Standards'' means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, *see* Original LMM Filing.

[21] For example, 16 ETPs transferred their listings to the Exchange on May 13, 2019. *See http://ir.cboe.com/~/media/Files/C/CBOE-IR-V2/press-release/2019/cboe-welcomes-16-barclays-etns.pdf.*

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

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–2020–043 and should be submitted on or before June 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12164 Filed 6–4–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88980; File No. SR–NYSEARCA–2020–49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-location Services

June 1, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 18, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges (together, the ''Fee Schedules'') related to co-location services with respect to connectivity to the ICE Data Global Index and to waive any change fees that a User would otherwise incur as a result of the proposed change. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedules related to co-location[4] services offered by the Exchange with respect to connectivity to the ICE Data Global Index (''GIF'') and to waive any change fees that a User would otherwise incur as a result of the proposed change.

Proposed Change

The Exchange offers Users[5] connectivity to data feeds from third party markets and other content service providers (''Third Party Data Feeds'').[6] The list of Third Party Data Feeds is set forth in the Fee Schedules, and includes connectivity to the GIF for a monthly connectivity fee of $100.[7]

ICE, which publishes the GIF, announced to its customers that connect to the GIF that it will no longer offer the GIF as a stand-alone product. Accordingly, the Exchange proposes to cease offering connectivity to the GIF once it is no longer available. The Exchange has been informed by ICE that cessation is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice.

Users are subject to a change fee if they request a change to one or more existing co-location services.[8] The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

In order to implement the proposed change, the Exchange proposes to make

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. (''ICE''). Through its ICE Data Services (''IDS'') business, ICE operates a data center in Mahwah, New Jersey (the ''data center''), from which the Exchange provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Affiliate SROs''). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–46, SR–NYSEAmer–2020–40, SR–NYSECHX–2020–17, and SR–NYSENAT–2020–19.

[6] *See* Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR–NYSEArca–2016–89) (notice of filing of Partial Amendment No. 4 and order granting accelerated approval of a proposed rule change, as modified by Amendment Nos. 1 through 4, to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

[7] The Exchange has an indirect interest in the GIF because ICE is the Exchange's ultimate parent. *See id.,* at 15771, and Securities Exchange Act Release No. 79673 (December 22, 2016), 81 FR 96107 (December 29, 2016) (SR–NYSEArca–2016–89) (notice of filing of Amendments Nos. 2 and 3 to proposed rule change to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

[8] *See* Securities Exchange Act Release Nos. 67667 (August 15, 2012), 77 FR 50743 (August 22, 2012) (SR–NYSEArca–2012–63) (order approving a proposed rule change amending the NYSE Arca Options Fee Schedule to provide for additional co-location services and establish related fees), and 67669 (August 15, 2012), 77 FR 50746 (August 22, 2012) (SR–NYSEArca–2012–62) (order approving a proposed rule change amending the NYSE Arca Equites Schedule of Fees and Charges for Exchange Services to provide for additional co-location services and establish related fees).

the following changes to the section entitled ''Connectivity to Third Party Data Feeds'':

• In the first paragraph and in the table of Third Party Data Feeds, add an asterisk after ''ICE Data Global Index.''

• Following the table of Third Party Data Feeds, add the following text:

* ICE will cease to offer the GIF as a stand-alone product, which the Exchange has been informed by ICE is currently expected to occur before the end of 2020. The Exchange will announce the operative date through a customer notice. Any change fees that a User would otherwise incur as a result of the proposed change will be waived.

The GIF includes the values of various indices and exchange traded product data.[9] Based on information published by ICE Data Services, all the data in the GIF was already available on the ICE Data Services Consolidated Feed (''Consolidated Feed'').[10] The Exchange offers connectivity to the Consolidated Feed, and does not propose to change the price for such connectivity. In addition, the Exchange's connectivity to the GIF and the Consolidated Feed should have approximately the same latency.

Application and Impact of the Proposed Change

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As is currently the case, the purchase of any colocation service is completely voluntary and the Fee Schedules are applied uniformly to all Users.

Currently, there are seven Users that have connectivity to the GIF, and so would be affected by the change. If any of them wish to continue having connectivity to the information in the GIF, they could connect to the Consolidated Feed, which none of them do presently. The monthly cost for connectivity to the Consolidated Feed depends on the size of the bandwidth utilized. If a User opts to connect to the Consolidated Feed to connect to the information in the GIF, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Competitive Environment

The Exchange operates in a highly competitive market in which exchanges and other vendors (*e.g.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [11]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Proposed Rule Change Is Reasonable and Equitable

The Exchange believes that the proposed rule change is reasonable and equitable for the following reasons.

The Exchange believes that it is reasonable and an equitable allocation of its fees and credits to add a note to its Fee Schedules stating that ICE will cease to offer the GIF as a stand-alone product, as the Exchange will no longer be able to offer the service once that occurs.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through IDS or from a third party provider. A User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that it is reasonable and equitable that it waive any change fees that a User would otherwise incur as a result of the proposed change, as Users would have no choice but to terminate connectivity to the GIF. The fee waiver would help to alleviate any burden related to the change.

The Proposed Rule Change Would Protect Investors and the Public Interest

The Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest for the following reasons.

It would be against the protection of investors and the public interest if the Exchange were to continue to offer something that it cannot provide because the relevant feed has been discontinued. Adding the proposed note to its Fee Schedules would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

[9] The Exchange understands that some of the indices may include Exchange or Affiliate SRO data as underlying components, but the GIF does not include those underlying components or other information directly from the Exchange and Affiliate SROs.

[10] *See* ''Consolidated Data Feed Coverage List—Indices and Indicators'' at *https://www.theice.com/market-data/connectivity-and-feeds/consolidated-feed/coverage-list.*

[11] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. As a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally: As a consequence of ICE's ceasing to offer the GIF as a stand-alone product, the Exchange will not be able to provide any Users with connectivity to the GIF. The Exchange proposes to waive any change fees that a User would otherwise incur as a result of the proposed change.

Adding the proposed note to the Fee Schedules would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete, provide a timeline for the change, and state that any change fees that a User would otherwise incur as a result of the proposed change would be waived.

If a User wishes connectivity to the information in the GIF, the Users could connect to the Consolidated Feed through the Exchange. If any of the seven Users that have connectivity to the GIF opt to connect to the Consolidated Feed, the monthly connectivity cost charged by the Exchange would be $200.

ICE has informed the Exchange that currently there are various third parties that offer Users connectivity to the Consolidated Feed. To use such third party connectivity to the Consolidated Feed, a User may utilize the IDS network, a third party telecommunication network, a cross connect, or a combination thereof to access the Consolidated Feed, through a connection to an access center outside the data center (which could be an IDS access center, a third-party access center, or both), another User, or a third party vendor.

Use of any co-location service is completely voluntary, and each market participant is able to determine whether to use co-location services based on the requirements of its business operations.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

The Exchange believes that the proposed change is necessary and appropriate. Adding the proposed note to the Fee Schedules would reduce any potential ambiguity and provide clarification concerning the availability and the costs of connectivity to Third Party Data Feeds available to Users, because it would highlight that the GIF will become obsolete and provide a timeline for the change.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [18] normally does not become operative prior to 30 days after the date of the filing. However, pursuant

[14] 15 U.S.C. 78f(b)(8).

[15] *See* 70 FR 37496, *supra* note 11.

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6).

to Rule 19b–4(f)(6)(iii),[19] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that such waiver would be consistent with the protection of investors and the public interest because it would allow the Exchange to waive the change fee sooner. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would permit the Exchange, without undue delay, to cease offering the GIF when it becomes unavailable, provide notice to customers and waive the change fee. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[20]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2020–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2020–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2020–49 and should be submitted on or before June 26, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–12161 Filed 6–4–20; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 16480 and # 16481; Kentucky Disaster Number KY–00079]

Administrative Declaration of a Disaster for the Commonwealth of Kentucky

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Kentucky dated 06/01/2020.

Incident: Severe Storms, Flooding, Flash Flooding, Landslides and Mudslides.

Incident Period: 02/03/2020 through 02/29/2020.

DATES: Issued on 06/01/2020.

Physical Loan Application Deadline Date: 07/31/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 03/01/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bell, Harlan, Whitley.

Contiguous Counties:

Kentucky: Clay, Knox, Laurel, Leslie, Letcher, McCreary, Perry.

Tennessee: Campbell, Claiborne.

Virginia: Lee, Wise.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	7.500
Businesses Without Credit Available Elsewhere	3.750
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16480 6 and for economic injury is 16481 0.

The States which received an EIDL Declaration # are Kentucky, Tennessee, Virginia.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–12204 Filed 6–4–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before July 6, 2020.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Small Business Administration collects this information from lenders who participate in the secondary market program. The information is used to facilitate and administer secondary market transactions in accordance with 15 U.S.C. 634(f)3 and to monitor the program for compliance with 15 U.S.C. 639(h).

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

Title: Secondary Participation Guaranty Agreement.

Description of Respondents: Small Business Lending Companies.

Form Number: SBA Forms 1502, 1086.

Total Estimated Annual Responses: 4,000.

Total Estimated Annual Hour Burden: 60,000.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–12170 Filed 6–4–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16448 and #16449; Mississippi Disaster Number MS–00127]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4536–DR), dated 05/08/2020.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 04/12/2020.

DATES: Issued on 05/29/2020.

Physical Loan Application Deadline Date: 07/07/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 02/08/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Mississippi, dated 05/08/2020, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clarke, Clay, Coahoma, Grenada, Holmes, Jasper, Lafayette, Lawrence, Leake, Montgomery, Noxubee, Panola, Quitman, Smith, Sunflower, Tallahatchie, Tate, Tunica, Walthall, Webster, Yalobusha.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–12193 Filed 6–4–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before July 6, 2020.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: The Small Business Investment Act authorizes SBA to guarantee a debenture issued by a Certified Development Company (CDC). The proceeds from each debenture are used to fund loans to eligible small business concerns (''504

loans''). 15 U.S.C. 697(a). The Small Business Act and the Small Business Investment Act mandate that all guaranteed loans provided by the SBA to small business concerns (SBCs) must have a reasonable assurance of ability to repay. See 15 U.S.C. 636(a)(6) and 687(f); see also 13 CFR 120.150. The information collections described below—SBA Form 1244 and SBA Form 2450—are part of the application process for a 504 loan. SBA is proposing to make changes to Form 2450 to remove duplicative questions as well as questions that are no longer applicable to the 504 Loan Program.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

Title: Application for Section 504 Loan.

Description of Respondents: Small Business Concerns applying for a section 504 loan and Certified Development Companies.

(i) Form Number: SBA Form 1244, Application for Section 504 Loan. The information collected by this form is used to review the eligibility of the small business concern (SBC) for SBA financial assistance; the creditworthiness and repayment ability of the SBC; and the terms and conditions of the 504 loan for which the SBC is applying.

(ii) Form 2450 is the Eligibility Checklist used to document the 504 loan's eligibility based on program requirements. These forms are used by CDCs to request SBA's guarantee on each debenture.

SBA has established a streamlined loan application processing procedure known as the Abridged Submission Method (ASM). Under this process, the CDCs are required to collect and retain all exhibits to SBA Form 1244, but are only required to submit selective documents. CDCs using the non-ASM method are required to submit all documents and exhibits required for Form 1244. All CDCs must submit the Form 2450.

The burden estimates (based on the experience of the CDCs and SBA field offices) of the burden hours imposed by use of these forms, including exhibits, are as follows:

There are 260 CDCs affected by the information collection. The total number of small business concerns that will annually respond to Form 1244 is approximately 7,000 based on the average submission of applications submitted from CDCs over the past FY using both the ASM and non-ASM methods. This is a total of 7,260 respondents. Burden hours are 2.25 hours for ASM and 2.45 hours for non-ASM submissions (this number is slightly higher due to the fact that these respondents are required to submit more documentation than the ASM respondents). These estimates include the content from SBA Form 2450, which takes an estimated 15 minute for completion.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Form 1244

Total burden hours = 16,799
Submission through the ASM—4,937 × 2.25 = 11,108 burden hours
Submission through non-ASM (standard method)—2,323 × 2.45 = 5,691 burden hours

Form 2450

Total burden hours = 1,815
Submission through the ASM and non-ASM—7,260 × .25 = 1,815 burden hours

Curtis Rich,

Management Analyst.

[FR Doc. 2020–12173 Filed 6–4–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16478 and #16479; Texas Disaster Number TX–00550]

Administrative Declaration of a Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 06/01/2020.

Incident: Severe Storms and Tornadoes.

Incident Period: 04/22/2020.

DATES: Issued on 06/01/2020.

Physical Loan Application Deadline Date: 07/31/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 03/01/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Polk

Contiguous Counties:

Texas: Angelina, Hardin, Liberty, San Jacinto, Trinity, Tyler.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	7.500
Businesses Without Credit Available Elsewhere	3.750
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16478 C and for economic injury is 16479 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–12201 Filed 6–4–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16423 and #16424; Mississippi Disaster Number MS–00125]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–4538–DR), dated 04/23/2020.

Incident: Severe Storms, Flooding, and Mudslides.

Incident Period: 02/10/2020 through 02/18/2020.

DATES: Issued on 05/29/2020.

Physical Loan Application Deadline Date: 06/22/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 01/25/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Mississippi, dated 04/23/2020, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Wilkinson

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Cynthia Pitts,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2020–12198 Filed 6–4–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2020–0024]

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2020–0024].

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 4, 2020. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Statement Regarding Marriage—20 CFR 404.726—0960–0017. Section 216(h)(1)(A) of the Social Security Act (Act) directs SSA to apply State law to determine an individual's marital relationship. Some state laws recognize marriages without a ceremony (*i.e.,* common-law marriages). In such cases, SSA provides the same spouse or widow(er) benefits to the common-law spouses as it does to ceremonially married spouses. To determine common-law spouses, SSA must elicit information from blood relatives or other persons who are knowledgeable about the alleged common-law relationship. SSA uses Form SSA–753, Statement Regarding Marriage, to collect information from third parties to verify the applicant's statements about intent; cohabitation; and holding out to the public as married, which are the basic tenets of a common-law marriage. SSA uses the information to determine if a valid marital relationship exists, and if the common-law spouse is entitled to Social Security spouse, or widow(er) benefits. The respondents are third parties who can confirm or deny the alleged common-law marriage.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–753	40,000	1	9	6,000	$25.72 *	24 **	$565,840 ***

* We based this figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_stru.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Statement of Agricultural Employer (Year Prior to 1988; and 1988 and later)—20 CFR 404.702, 404.802, 404.1056—0960–0036. If agricultural workers believe their employers (1) did not report their wages, or (2) reported incorrect wage amounts, SSA will assist them in resolving this issue. Specifically, SSA will send Form SSA–1002 or Form SSA–1003 to the agricultural employers to collect evidence of wages paid. The respondents are agricultural employers whose workers request wage verification or correction for their earnings records.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–1002	7,500	1	30	3,750	* $12.52	** 24	*** $84,510
SSA–1003	25,000	1	30	12,500	* 12.52	** 24	*** 219,100
Total	32,500			16,250			*** 303,610

* We based this figures on average Agricultural Workers hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. Questionnaire About Employment or Self-Employment Outside the United States—20 CFR 404.401(b)(1), 404.415, & 404.417—0960–0050. When a Social Security beneficiary or claimant reports work outside the U.S., SSA uses Form SSA–7163 to determine if foreign work deductions are applicable. Specifically, SSA uses Form SSA–7163 to determine: (1) Whether work performed by beneficiaries outside the U.S. is cause for deductions from their monthly benefits; (2) which of two work tests (foreign or regular test) is applicable; and (3) the number of months, if any, for SSA-imposed deductions. SSA determines whether the annual earnings test applies to all earnings from work covered by the Act, including earnings from covered work performed outside the U.S. However, because of the differences in foreign currency values, it is administratively impractical to apply this test to earnings from non-covered work performed outside the U.S. and base it on U.S. dollars. So, the 45-hour work test provides for deductions from the benefits of employees under full retirement age who engage in non-covered remunerative activity for more than 45 hours in a calendar month. SSA asks beneficiaries working outside the U.S. to complete this form annually or every other year (depending on the country of residence). Respondents are beneficiaries or claimants for Social Security benefits who are engaged in work outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–7163	20,000	1	60	20,000	$10.22 *	24 **	$286,160 ***

* We based these figures on average DI hourly wages based on SSA's current FY 2019 data (*https://www.ssa.gov/legislation/2019%20Fact%20Sheet.pdf*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Internet Representative Payee Accounting, My Representative Payee Accounting, Representative Payee Report-Adult, Representative Payee Report-Child, and Representative Payee Report-Organizational Representative Payees—20 CFR 404.2035, 404.2065, 416.635, and 416.665—0960–0068. When SSA determines it is not in an Old-Age, Survivors, and Disability Insurance (OASDI) or Supplemental Security Income (SSI) recipient's best interest to receive Social Security payments directly, the agency will designate a representative payee for the recipient. The representative payee can be: (1) A family member; (2) a non-family member who is a private citizen and is acquainted with the beneficiary; (3) an organization; (4) a state or local government agency; or (5) a business. In the capacity of representative payee, the person or organization receives the SSA recipient's payments directly and manages these payments. As part of its stewardship mandate, SSA must ensure the representative payees are properly using the payments they receive for the recipients they represent. The agency annually collects the information necessary to make this assessment using Form SSA–623, Representative Payee Report-Adult; Form SSA–6230, Representative Payee Report-Child; Form SSA–6234, Representative Payee Report-Organizational Representative Payees; and through the electronic internet applications, internet Representative Payee Accounting (iRPA) & My Representative Payee Accounting (MyRPA). The respondents are representative payees of OASDI and SSI recipients.

Type of Request: Revision to an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–623	1,086,152	1	15	271,538	* $10.22	** 24	*** $7,215,310
SSA–6230	97,196	1	15	24,299	* 10.22	** 24	*** 645,669
SSA–6234	497,505	1	15	124,376	* 10.22	** 24	*** 3,304,923

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
iRPA+	290,253	1	15	72,563	* 10.22		*** 741,594
myRPA+	70,021	1	15	17,505	* 10.22		*** 178,901
Totals	2,041,127			510,281			*** 12,086,397

+ All forms (SSA–623, SSA–6230, & SSA–6234) can also be accessed via the internet platforms, iRPA and myRPA.
* We based these figures on average DI hourly wages based on SSA's current FY 2019 data (*https://www.ssa.gov/legislation/2019%20Fact%20Sheet.pdf*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Student Reporting Form—20 CFR 404.352(b)(2), 404.367, 404.368, 404.415, 404.434, & 422.135—0960—0088. To qualify for Social Security Title II student benefits, student beneficiaries must be in full-time attendance status at an educational institution. In addition, SSA requires these beneficiaries to report events that may cause a reduction, termination, or suspension of their benefits. SSA collects such information on Forms SSA–1383 and SSA–1383–FC to determine if the changes or events the student beneficiaries report will affect their continuing entitlement to SSA benefits. SSA also uses the SSA–1383 and SSA–1383–FC to calculate the correct benefit amounts for student beneficiaries. The respondents are Social Security Title II student beneficiaries.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–1383	75,000	1	6	7,500	* $7.25	** 24	*** $271,875
SSA–1383–FC	805	1	6	81	* 7.25	** 24	*** 2,922
Totals	75,805			7,581			*** 274,797

* We based this figure on the Federal minimum hourly wage, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/opub/reports/minimum-wage/2019/home.htm*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. Advanced Notice of Termination of Child's Benefits & Student's Statement Regarding School Attendance—20 CFR 404.350–404.352, 404.367–404.368—0960–0105. SSA collects information on Forms SSA–1372–BK and SSA–1372–BK–FC to determine whether children of an insured worker meet the eligibility requirements for student benefits. The data we collect allows SSA to determine student entitlement, and assess whether to terminate benefits. SSA uses the SSA–1372–BK for domestic student claimants and the SSA–1372–BK–FC for student claimants living and attending school outside the United States. The respondents are student claimants or beneficiaries for Social Security benefits, their respective schools and, in some cases, their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Individuals/Households (SSA–1372–BK)	233,179	1	8	31,091	* $7.50	** 24	*** $932,723
State/Local/Tribal Government (SSA–1372–BK)	233,179	1	3	11,659	* 47.54	** 24	*** 4,988,420
Individuals/Households (SSA–1372–BK–FC)	746	1	8	99	* 7.50	** 24	*** 2,978
State/Local/Tribal Government (SSA–1372–BK–FC)	746	1	3	37	* 47.54	** 24	*** 15,926

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Total	467,850			42,886			*** 5,940,047

* We based these figures on average DI hourly wages for single students based on SSA's current FY 2019 data (*https://www.ssa.gov/legislation/2019%20Fact%20Sheet.pdf*), and the BLS.gov data for School Worker's hourly wages (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Modified Benefit Formula Questionnaire—0960–0395. SSA collects information on Form SSA–150 to determine which formula to use in computing the Social Security benefit for someone who receives a pension from employment not covered by Social Security. The Windfall Elimination Provision (WEP) requires use of a benefit formula replacing a smaller percentage of a worker's pre-retirement earnings. However, the resulting amount cannot show a difference in the benefit computed using the modified and regular formulas greater than one-half the amount of the pension received in the first month an individual is entitled to both the pension and the Social Security benefit. The SSA–150 collects the information needed to make the necessary benefit computations. SSA requires the respondents to furnish the information on Form SSA–150 so we can calculate their benefits using the data they supply. SSA calculates the benefits of applicants who do not respond to this questionnaire using the full WEP reduction. SSA employees collect this information once from applicants at the time they file their claim. The respondents are applicants for old-age and disability benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–150	21,540	1	8	2,872	$10.22 *	24 **	$117,407

* We based this figure on average DI payments based on SSA's current FY 2019 data (*https://www.ssa.gov/legislation/2019%20Fact%20Sheet.pdf*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

8. Employee Work Activity Questionnaire—20 CFR 404.1574(a)—0960–0483. Social Security Disability Insurance (SSDI) beneficiaries and SSI recipients qualify for payments when a verified physical or mental impairment prevents them from working. If disability claimants attempt to return to work after receiving payments, but are unable to continue working, they submit Form SSA–3033, Employee Work Activity Questionnaire, so SSA can evaluate their work attempt. SSA also uses this form to evaluate unsuccessful subsidy work and determine applicants' continuing eligibility for disability payments. The respondents are employers of SSDI beneficiaries and SSI recipients who unsuccessfully attempted to return to work.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3033	15,000	1	15	3,750	$59.15 *	24 **	$576,712 ***

* We based this figure on average general and operations manager's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes111021.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

9. Sheltered Workshop Wage Reporting—0960–0771. Sheltered workshops are private non-profit organizations, or institutions, that implement a recognized program of rehabilitation for handicapped workers, or provide such workers with remunerative employment, or other occupational rehabilitating activity of an educational or therapeutic nature. Sheltered workshops perform a service for their clients by reporting monthly wages directly to SSA. SSA uses the information these workshops provide to verify and post monthly wages to SSI recipient's records. Most workshops report monthly wage totals to their local SSA office so we can adjust the client's

SSI payment amount in a timely manner, and prevent overpayments. Sheltered workshops are motivated to report wages voluntarily as a service to their clients. Respondents are sheltered workshops that report monthly wages for services performed in the workshop.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
Sheltered Workshop Wage Reporting	800	12	9,600	15	2,400	$19.31 *	24 **

** We based this figure on average Rehabilitation Counselors hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes211015.htm*).

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Type of Request: Revision of an OMB-approved information collection.

Dated: June 1, 2020.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2020–12147 Filed 6–4–20; 8:45 am]

BILLING CODE 4191–02–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36405]

Merrimack & Grafton Railroad Corporation—Change of Operators Exemption—Line of New England Southern Railroad Co.

Merrimack & Grafton Railroad Corporation (MGRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to replace New England Southern Railroad Co. (NESR) as the operator of an approximately 73-mile railroad line (the Line) owned by the State of New Hampshire. According to MGRC, the Line extends from milepost P 21.30 at Lincoln, N.H., to milepost C 0.58 at Concord, N.H., where the Line connects with tracks owned by Pan Am Railways.

MGRC states that it is a wholly owned subsidiary of Trans Rail Holding Company (TRHC) and was formed for the purpose of becoming the new operator of the Line. According to MGRC, NESR currently provides common carrier rail operations over the Line pursuant to an Operating Agreement between NESR and the New Hampshire Department of Transportation (NHDOT). According to MGRC, on April 30, 2020, TRHC entered into an agreement to purchase some of the business assets of NESR. As part of that agreement, NESR will assign all of its rights and obligations under the Operating Agreement to MGRC, subject to NHDOT's approval, which MGRC states that it will obtain prior to the assignment.

This transaction is related to a concurrently filed verified notice of exemption in *Trans Rail Holding Co.—Continuance of Control Exemption—Merrimack & Grafton Railroad,* Docket No. FD 36403, in which TRHC seeks to continue in control of MGRC upon MGRC's becoming a Class III rail carrier.

MGRC certifies that the transaction does not involve any provision in any agreement that would limit future interchange with a third-party connecting carrier. MGRC certifies that its projected annual revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed $5 million. Under 49 CFR 1150.32(b), a change in operator requires that notice be given to shippers. MGRC certifies that notice of the change in operator was provided to the shippers on the Line.

The transaction may be consummated on or after June 20, 2020, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than June 12, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36405, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on MGRC's representative, Thomas W. Wilcox, GKG Law, P.C., 1055 Thomas Jefferson Street NW, Suite 500, Washington, DC 20007.

According to MGRC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2020–12228 Filed 6–4–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub-No. 800X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Will County, Ill.

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 1.08-mile rail line on its Chicago Division, New Rock Subdivision, from Val Station 23+10 to Val Station 97+55, in Will County, Ill. (the Line). The Line traverses U.S. Postal Service Zip Code 60436.

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12

(newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) [1] to subsidize continued rail service has been received, this exemption will be effective on July 5, 2020, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) [3] must be filed by June 15, 2020.[4] Petitions for reconsideration must be filed by June 25, 2020, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with Board should be sent to CSXT's representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available at *www.stb.gov.*

Decided: May 29, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Eden Besera,

Clearance Clerk.

[FR Doc. 2020–12112 Filed 6–4–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 682 (Sub-No. 11)]

2019 Tax Information for Use in the Revenue Shortfall Allocation Method

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Board is publishing, and providing the public an opportunity to comment on, the 2019 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method (RSAM).

DATES: Comments are due by July 6, 2020. If any comments opposing AAR's calculation are filed, AAR's reply will be due by July 27, 2020. If no comments are filed by July 6, 2020, AAR's calculation of the 2019 weighted average state tax rates will be automatically adopted by the Board, effective July 7, 2020.

ADDRESSES: Comments may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245–0368. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's *Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1), slip op. at 10 (STB served Sept. 5, 2007),[1] as further revised in *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method,* EP 646 (Sub-No. 2) (STB served Nov. 21, 2008). RSAM is intended to measure the average markup that the railroad would need to collect from all of its ''potentially captive traffic'' (traffic with a revenue-to-variable-cost ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2) (*i.e.,* earn a return on investment equal to the railroad industry cost of capital). *Simplified Standards—Taxes in RSAM,* slip op. at 1. In *Simplified Standards—Taxes in RSAM,* slip op. at 3, 5, the Board modified its RSAM formula to account for taxes, as the prior formula mistakenly compared pre-tax and after-tax revenues. In that decision, the Board stated that it would institute a separate proceeding in which Class I railroads would be required to submit the annual tax information necessary for the Board's annual RSAM calculation. *Id.* at 5–6.

Pursuant to 49 CFR 1135.2, AAR is required to annually calculate and submit to the Board the weighted average state tax rate for each Class I railroad for the previous year. On May 28, 2020, AAR filed its calculation of the weighted average state tax rates for 2019, listed below for each Class I railroad:

WEIGHTED AVERAGE STATE TAX RATES

Railroad	2019 (%)	2018 (%)	% Change
BNSF Railway Company	5.234	5.312	−0.078
CSX Transportation, Inc	5.097	5.238	−0.141
Grand Trunk Corporation	8.129	8.130	−0.001
The Kansas City Southern Railway Company	5.711	5.422	0.289
Norfolk Southern Combined Railroad Subsidiaries	5.697	5.753	−0.056
Soo Line Corporation	8.181	8.193	−0.012
Union Pacific Railroad Company	5.714	5.726	−0.012

Any party wishing to comment on AAR's calculation of the 2019 weighted average state tax rates should file a comment by July 6, 2020. *See* 49 CFR 1135.2(c). If any comments opposing AAR's calculations are filed, AAR's reply will be due by July 27, 2020. *Id.* If any comments are filed, the Board will review AAR's submission, together

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[1] Persons interested in submitting an OFA to subsidize continued rail service must first file a formal expression of intent to file an offer, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] CSXT states that it intends to consummate the discontinuance of the Line on July 7, 2020.

[3] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require environmental review.

[1] *Aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g, CSX Transp., Inc.* v. *STB,* 584 F.3d 1076 (D.C. Cir. 2009).

with the comments, and serve a decision within 60 days of the close of the record that either accepts, rejects, or modifies AAR's railroad-specific tax information. *Id.* If no comments are filed by July 6, 2020, AAR's submitted weighted average state tax rates will be automatically adopted by the Board, effective July 7, 2020. *Id.*

Decided: June 1, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2020–12107 Filed 6–4–20; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36403]

Trans Rail Holding Company—Continuance of Control Exemption—Merrimack & Grafton Railroad Corporation

Trans Rail Holding Company (TRHC), a noncarrier railroad holding company, has filed a verified notice of exemption under 49 CFR 1180.2(d)(2) to continue in control of Merrimack & Grafton Railroad Corporation (MGRC), upon MGRC's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *Merrimack & Grafton Railroad—Change of Operators Exemption—Line of New England Southern Railroad,* Docket No. FD 36405. In that proceeding, MGRC seeks an exemption under 49 CFR 1150.31 to operate over approximately 73 miles of rail line in New Hampshire (the Line).

According to the verified notice, TRHC currently controls five Class III railroads through ownership of their controlling stock: (1) Vermont Railway, Inc.; (2) the Clarendon and Pittsford Railroad Company; (3) Washington County Railroad Company; (4) the New York & Ogdensburg Railway Company, Inc.; and (5) Green Mountain Railroad Corporation.

The verified notice states that: (1) The Line does not connect with any of the tracks of the other five railroads controlled by TRHC; (2) the transaction is not part of a series of anticipated transactions that would connect the Line to any of the tracks of the other railroads; and (3) neither MGRC nor any of the carriers controlled by TRHC are Class I rail carriers. The proposed transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

The earliest this transaction may be consummated is June 20, 2020, the effective date of the exemption (30 days after the verified notice was filed).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than June 12, 2020 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36403, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on TRHC's representative, Thomas W. Wilcox, GKG Law, P.C., 1055 Thomas Jefferson Street NW, Suite 500, Washington, DC 20007.

According to the verified notice, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 2, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2020–12229 Filed 6–4–20; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2020–0022]

Initiation of Section 301 Investigations of Digital Services Taxes

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigations, and request for comments.

SUMMARY: The U.S. Trade Representative is initiating investigations with respect to Digital Services Taxes (DSTs) adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. The Office of the United States Trade Representative (USTR) is seeking public comments in connection with these investigations.

DATES: To be assured of consideration, you must submit written comments by July 15, 2020.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov* (*Regulations.gov*). Follow the instructions for submitting comments in section IV. The docket number is USTR–2020–0022. For issues with on-line submissions, please contact the USTR Section 301 line at 202–395–5725.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning the submission of written comments, please contact the USTR Section 301 line at 202–395–5725.

For questions concerning the investigation, please contact Patrick Childress, Assistant General Counsel, 202–395–3150; or Robert Tanner, Director for ICT Services & Digital Trade, 202–395–6125.

For questions regarding specific jurisdictions covered by the investigations, please contact: For the EU, EU member States, Turkey, and the United Kingdom: Michael Rogers, Director for Europe, 202–395–2684; for Brazil, Courtney Smothers, Senior Director for MERCOSUR Countries, 202–395–7657; for India, Brendan Lynch, Deputy Assistant U.S. Trade Representative, South and Central Asian Affairs, 202–395–2851; and for Indonesia, Bart Thanhauser, Director for Southeast Asia and the Pacific, 202–395–4088.

SUPPLEMENTARY INFORMATION:

I. Digital Services Taxes

Over the past two years, various jurisdictions have taken under consideration or adopted taxes on revenues that certain companies generate from providing certain digital services to, or aimed at, users in those jurisdictions. They are referred to as Digital Services Taxes or DSTs. Available evidence suggests the DSTs are expected to target large, U.S.-based tech companies. These jurisdictions include:

Austria: In October 2019, Austria adopted a DST that applies a 5% tax to revenues from online advertising services. The law went into force on January 1, 2020. The tax applies only to

companies with at least €750 million in annual global revenues for all services and €25 million in in-country revenues for covered digital services.

Brazil: Brazil is considering a legislative proposal entitled the ''Contribution for Intervention in the Economic Domain'' or CIDE. If adopted, CIDE would apply to the gross revenue derived from digital services provided by large technology companies.

The Czech Republic: The Parliament of the Czech Republic is considering a draft law that would apply a 7% DST to revenues from targeted advertising and digital interface services. The tax would apply only to companies generating €750 million in annual global revenues for all services and CZK 50 million in in-country revenues for covered digital services.

The European Union: The European Commission is considering a DST as part of the financing package for its proposed COVID–19 recovery plan. The EU DST is based on a 2018 DST proposal that was not adopted. The 2018 EU proposal included a 3% tax on revenues from targeted advertising and digital interface services, and would have applied only to companies generating at least €750 million in global revenues from covered digital services and at least €50 million in EU-wide revenues for covered digital services.

India: In March 2020, India adopted a 2% DST. The tax only applies only to non-resident companies, and covers online sales of goods and services to, or aimed at, persons in India. The tax applies only to companies with annual revenues in excess of approximately Rs. 20 million (approximately U.S. $267,000). The tax went into effect on April 1, 2020.

Indonesia: Earlier this year, Indonesia adopted an electronic transaction tax that targets cross-border, digital transactions. Further implementing measures are required for the new tax to go into effect.

Italy: Italy has adopted a DST. The measure includes a 3% tax on revenues from targeted advertising and digital interface services. This tax applies only to companies generating at least €750 million in global revenues for all services and €5.5 million in in-country revenues for covered digital services. The tax applies as of January 1, 2020.

Spain: Spain is considering a draft DST. The measure would apply a 3% tax to revenues from targeted advertising and digital interface services. This tax would apply only to companies generating at least €750 million in global revenues for all services and €3 million in in-country revenues for covered digital services.

Turkey: Turkey has adopted a DST. The measure applies a 7.5% tax to revenues from targeted advertising, social media and digital interface services. The tax applies only to companies generating €750 million in global revenues from covered digital services and TL20 million in in-country revenues from covered digital services. The Turkish President has authority to increase the tax rate up to 15%. The law went into effect on March 1, 2020.

The United Kingdom: The United Kingdom is considering a DST proposal as part of its Finance Bill 2020. The measure would apply a 2% tax on revenues above £25 million to internet search engines, social media, and online marketplaces. The tax applies only to companies generating at least £500 million in global revenues from covered digital services and £25 million in in-country revenues from covered digital services. The bill is in the final stages of adoption by Parliament, and if passed, payments would be due from affected companies in 2021.

II. Initiation of Section 301 Investigations

Section 302(b)(1)(A) of the Trade Act of 1974, as amended (Trade Act), authorizes the U.S. Trade Representative to initiate an investigation to determine whether an act, policy, or practice of a foreign country is actionable under section 301 of the Trade Act. Actionable matters under section 301 include, *inter alia,* acts, polices, and practices of a foreign country that are unreasonable or discriminatory and burden or restrict U.S. commerce. An act, policy, or practice is unreasonable if the act, policy, or practice, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable.

Pursuant to section 302(b)(1)(B), USTR has consulted with appropriate advisory committees. USTR also has consulted with agencies on the Section 301 Committee.

In light of concerns with the DSTs adopted or under consideration by the jurisdictions discussed above, the U.S. Trade Representative has initiated Section 301 investigations with respect to DSTs adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey, and the United Kingdom. Pursuant to section 303(a) of the Trade Act, the U.S. Trade Representative has requested consultations with the governments of these jurisdictions.

Pursuant to section 304 of the Trade Act, the U.S. Trade Representative must determine whether the act, policy, or practice under investigation is actionable under Section 301. If that determination is affirmative, the U.S. Trade Representative must determine what action to take.

The investigation initially will focus on the following concerns with DSTs: Discrimination against U.S. companies; retroactivity; and possibly unreasonable tax policy. With respect to tax policy, the DSTs may diverge from norms reflected in the U.S. tax system and the international tax system in several respects. These departures may include: Extraterritoriality; taxing revenue not income; and a purpose of penalizing particular technology companies for their commercial success.

In addition to these areas of concern with DSTs, USTR invites comments on other aspects that may warrant a finding that one or more of the covered DSTs are actionable under Section 301.

III. Request for Public Comments

You may submit written comments on any issue covered by the investigations. In particular, USTR invites comments with respect to:

- Concerns with one or more of the DSTs adopted or under consideration by the jurisdictions covered in these investigations.
- Whether one or more of the covered DSTs is unreasonable or discriminatory.
- The extent to which one or more of the covered DSTs burdens or restricts U.S. commerce.
- Whether one or more of the covered DSTs is inconsistent with obligations under the WTO Agreement or any other international agreement.
- The determinations required under section 304 of the Trade Act, including what action, if any, should be taken.

In light of the uncertainties arising from COVID–19 restrictions, USTR is not at this time scheduling a public hearing in these investigations. USTR will provide further information in a subsequent notice if a hearing is to be held in these investigations.

IV. Procedures for Written Submissions

All submissions must be in English and sent electronically via *Regulations.gov*. To submit comments via *Regulations.gov*, enter docket number USTR–2020–0022. Find a reference to this notice and click on the link entitled 'comment now!' For further information on using the *Regulations.gov* website, please consult the resources provided on the website

by clicking on 'how to use *regulations.gov*' on the bottom of the *www.regulations.gov* home page. USTR will not accept hand-delivered submissions.

The *Regulations.gov* website allows users to submit comments by filling in a 'type comment' field or by attaching a document using an 'upload file' field. USTR prefers that you submit comments in an attached document. If you attach a document, it is sufficient to type 'see attached in the 'type comment' field. USTR strongly prefers submissions in Adobe Acrobat (.pdf). If you use an application other than Adobe Acrobat or Word (.doc), please indicate the name of the application in the 'type comment' field.

File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments submitted electronically that contain business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI.' You must clearly mark any page containing BCI by including 'BUSINESS CONFIDENTIAL' on the top of that page and clearly indicating, via brackets, highlighting, or other means, the specific information that is BCI. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Filers of submissions containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P.' Follow the 'BCI' and 'P' with the name of the person or entity submitting the comments. If these procedures are not sufficient to protect BCI or otherwise protect business interests, please contact the USTR Section 301 line at 202–395–5725 to discuss whether alternative arrangements are possible.

USTR will post submissions in the docket for public inspection, except BCI. You can view submissions on the *Regulations.gov* website by entering docket number USTR–2020–0022 in the search field on the home page.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–12216 Filed 6–4–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0563]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Noise Certification Documents for International Operations

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. The collection aids to make the aircraft noise certification information easily accessible to the flight crew and presentable upon request to the appropriate foreign officials for international airline operation of U.S. carriers. The information to be collected upholds the U.S. obligations under the Convention on International Civil Aviation and for which FAA policy comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. Thus the FAA has adopted ICAO's Standards and Recommended Practices as US regulations as a means of compliance with Annex 16 and requires noise documentation be carried on board aircraft that leave the United States.

DATES: Written comments should be submitted by August 4, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandy Liu, 800 Independence Ave. SW, Washington, DC 20591, Attn: AEE–100.

By fax: 202–267–5594.

FOR FURTHER INFORMATION CONTACT: Sandy R. Liu by email at: *sandy.liu@faa.gov*; phone: 202–267–4748.

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: 2120–0737.

Title: Aircraft Noise Certification Documents for International Operations.

Form Numbers: None. Reference: ICAO Annex 16, Vol.1—Aircraft Noise, Eighth edition (July 2017) Attachment G for format.

Type of Review: Renewal of an information collection.

Background: On March 2, 2010, the FAA published the final rule Notice No. 91–312, Aircraft Noise Certification Documents for International Operations (75 FR 9327). It requires operators that fly outside the United States, using aircraft subject to ICAO, Annex 16, Volume 1, to carry aircraft noise certification information on board the aircraft. This collection is needed to ensure consistent international compliance with the ICAO, Annex 16, Volume 1, Amendment 8 that requires certain noise information be carried on board the aircraft. This information must be easily accessible to the flight crew and presentable upon request to the appropriate foreign National Aviation Authority (NAA) officials. The collection is mandatory based on U.S. regulations and international standards.

Respondents: Operators of U.S. registered civil aircraft flying outside the United States.

Frequency: 70 airplanes.

Estimated Average Burden per Response: 25 minutes (0.42 hours).

Estimated Total Annual Burden: $25 per airplane × 70 airplanes affected = $1,750.

Issued in Washington, DC, on June 2, 2020.

Sandy Lium,

Engineer, Noise Division, Office of Environment and Energy, Noise Division (AEE–100).

[FR Doc. 2020–12208 Filed 6–4–20; 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 the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2020. 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 July 6, 2020.

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: 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.

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: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2020 (85 FR 17941). 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 June 1, 2020.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2020–12137 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent To Prepare Environmental Impact Statement (EIS): Maui County, Hawaii

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The FHWA is issuing this notice to advise the public that it is rescinding its NOI and will not be preparing an EIS to evaluate alternatives that would improve the roadway capacity, safety, and reliability of Honoapiilani Highway between Maalaea and Launiupoko on the west side of the island of Maui. A NOI to prepare an EIS was published in the **Federal Register** on June 7, 2007.

FOR FURTHER INFORMATION CONTACT: Ralph Rizzo, Division Administrator, Federal Highway Administration, 300 Ala Moana Boulevard, Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Hawaii Department of Transportation (HDOT), initiated an EIS. Improvements for this corridor were considered necessary to accommodate the existing and projected traffic demands, and to address safety and reliability. The project area is composed predominantly of a steep, rocky area known as the Pali area and a coastal plain. Due to the topography, the estimated project construction cost for any build alternative would likely be substantial, and because of limited funding availability, HDOT has decided not to proceed with the project. Therefore, the preparation of the EIS is being terminated.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139, 23 CFR 771, and 40 CFR 1500–1508.

Issued on: May 29, 2020.

Ralph Rizzo,

Division Administrator, Honolulu, HI.

[FR Doc. 2020–12113 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent To Prepare Environmental Impact Statement (EIS): Maui County, Hawaii

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The FHWA is issuing this notice to advise the public that the FHWA will not be preparing an EIS to evaluate alternatives that would reduce congestion and improve safety and reliability of Hana Highway between the intersection of Hana Highway with Haleakala Highway and Maliko Gulch on the north side of the Paia-Haiku region, Maui County, Hawaii. An NOI to prepare an EIS was published in the **Federal Register** on November 17, 2009.

FOR FURTHER INFORMATION CONTACT: Ralph Rizzo, Division Administrator,

Federal Highway Administration, 300 Ala Moana Boulevard, Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Hawaii Department of Transportation (HDOT), initiated an EIS with an NOI published in the **Federal Register** on November 17, 2009, at 67 FR 38310, to prepare an EIS.

The EIS identified three build alternatives within the initial project limits which varied from 6.3 miles to 6.9 miles in total length. An extensive Archaeological Inventory Survey (AIS) which covered 552 acres was conducted and resulted in the identification of 52 newly identified possible historic properties and 11 previously identified historic properties within or in the proximity of the study corridor. The AIS revealed that the three build alternatives all would have impacts on archaeological and historic resources and a Section 4(f) use would likely occur. A shorter avoidance alternative approximately 2.5 miles in total length was identified, however public opinion favors a considerably longer alternative not within the current project area and above the limited funding resources currently available. Therefore, HDOT has decided not to pursue the project and the preparation of the EIS is being terminated.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139, 23 CFR 771, and 40 CFR 1500–1508.

Issued on: May 29, 2020.

Ralph Rizzo,

Division Administrator Honolulu, HI.

[FR Doc. 2020–12119 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final State Agency Actions Under 23 U.S.C. 327 on Interstate 10 Broadway Curve, Interstate 17 (Split) to Loop 202 (Santan Freeway) in Maricopa County, AZ

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FHWA, on behalf of the Arizona Department of Transportation (ADOT), is issuing this notice to announce actions taken by ADOT and other relevant Federal agencies that are final. The actions relate to the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the proposed project Interstate 10 Broadway Curve, Interstate 17 (Split) to Loop 202 (Santan Freeway) in Maricopa County, AZ. The actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA, on behalf of ADOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions with authority on the highway project will be barred unless the claim is filed on or before November 2, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Olmsted, NEPA Assignment Manager, Environment Planning, Arizona Department of Transportation, 1611 W Jackson, MD EM02, Phoenix, Arizona 85007; telephone: (602) 712–6421, fax: (602) 712–3066, email: *solmsted@azdot.gov.* The Arizona Department of Transportation normal business hours are 8:00 a.m. to 4:30 p.m. (Mountain Standard Time).

You may also contact: Mr. Paul O'Brien, Environmental Planning Administrator, Arizona Department of Transportation, 1611 W Jackson, MD EM02, Phoenix, Arizona 85007; telephone: (602) 712–8669, fax: (602) 712–3066, email: *POBrien@azdot.gov.*

SUPPLEMENTARY INFORMATION: Effective April 16, 2019, the FHWA assigned and ADOT assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and ADOT.

Notice is hereby given that ADOT and other relevant Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following project in the State of Arizona: Interstate 10 Broadway Curve: Interstate 17 (Split) to Loop 202 (Santan Freeway) in Maricopa County, AZ. The actions by ADOT and other relevant Federal agencies and the laws under which such actions were taken, are described in the Draft EA approved on October 2, 2019, Final EA approved within the Finding of No Significant Impact issued on April 27, 2020, and in other documents in the administrative record. The FEA, FONSI, and other project records are available by contacting ADOT at the addresses provided above. Project decision documents are also available online at: *https://azdot.gov/node/15475.*

This notice applies to all ADOT and other relevant Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].
3. Land: Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. Wetlands and Water Resources: Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].
8. Water: Clean Water Act 33 U.S.C. 1251–1387.
9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of

Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: May 29, 2020.

Karla S. Petty,

Arizona Division Administrator, Phoenix, Arizona.

[FR Doc. 2020–11999 Filed 6–4–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rescinding the Notice of Intent To Prepare Environmental Impact Statement: South Kohala, Hawaii

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The FHWA is issuing this notice to advise the public that the FHWA is rescinding its NOI and will not be preparing an EIS to evaluate alternatives to realign and/or widen an existing highway in South Kohala in the County of Hawaii. An NOI to prepare an EIS was published in the **Federal Register** on November 29, 2002.

FOR FURTHER INFORMATION CONTACT: Ralph Rizzo, Division Administrator, Federal Highway Administration, 300 Ala Moana Boulevard, Box 50206, Honolulu, Hawaii 96850, Telephone: (808) 541–2700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Hawaii Department of Transportation (HDOT), initiated an EIS with an NOI published in the **Federal Register** on November 29, 2002, at 67 FR 71231, to prepare an EIS.

The study area begins near the intersection of Mud Lane and the Hawaii Belt Road (State Route 19) and terminates along Mamalahoa Highway (State Route 190) near the Waimea-Kohala Airport. The study also included a 1.7 mile spur to connect with Lindsey Road. Improvements were considered necessary to improve highway safety and reduce congestion, while preserving the character and ambience of the historic Waimea village. The Project would impact a sizable number of historic and archaeological resources due to the sheer number of archaeological sites identified during the survey. Avoidance of all these sites would be difficult and may not be feasible. Also, the County recently completed intersection improvements on the existing highway that improved congestion. Finally, the cost for the estimated right-of-way and construction would likely be substantial because of limited funding availability. Therefore, HDOT has decided not to proceed with the project and the preparation of the EIS is being terminated.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139, 23 CFR 771, and 40 CFR 1500–1508)

Issued on: May 29, 2020.

Ralph Rizzo,

Division Administrator, Honolulu, HI.

[FR Doc. 2020–12115 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Utah

AGENCY: Utah Department of Transportation (UDOT), Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice of limitations on claims for judicial review of actions by the U.S. Army Corps of Engineers.

SUMMARY: The FHWA, on behalf of UDOT, is issuing this notice to announce actions taken by the U.S. Army Corps of Engineers (USACE) that are final Federal agency actions. The final agency actions relate to a proposed highway project, the West Davis Corridor project in Davis County, Utah. Those actions grant licenses, permits and/or approvals for the project.

DATES: By this notice, FHWA, on behalf of UDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of these Federal agency actions on the highway project will be barred unless the claim is filed on or before November 2, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For UDOT: Randy Jefferies, Project Manager, UDOT Region 1, 166 W Southwell Street, Ogden, UT 84404; (801) 791–1059; email: *rjefferies@utah.gov.* UDOT's normal business hours are 8 a.m. to 5 p.m. (Mountain Time Zone), Monday through Friday, except State and Federal holidays. For USACE: Jason Gipson, Nevada/Utah Regulatory Section Chief; USACE Bountiful Regulatory Field Office, 533 West 2600 South, Suite 150, Bountiful, UT 84010; (801) 295–8380 x8314; email: *Jason.a.gipson@usace.army.mil.* USACE's normal business hours are 8 a.m. to 5 p.m. (Mountain Time Zone), Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Effective January 17, 2017, FHWA assigned to UDOT certain responsibilities of FHWA for environmental review, consultation, and other actions required by applicable Federal environmental laws and regulations for highway projects in Utah, pursuant to 23 U.S.C. 327. FHWA maintained responsibility to publish documents proposed by UDOT to be published in the **Federal Register**, including notices of final agency action under 23 U.S.C. 139(*l*)(1). FHWA also maintained responsibility of the environmental review process of the West Davis Corridor project until its issuance of a Record of Decision (FHWA ROD), which occurred on September 29, 2017. Since that time UDOT has been responsible for conducting any additional environmental reviews that are required for the West Davis Corridor project. On behalf of UDOT, notice is hereby given that the USACE has taken final agency actions subject to 23 U.S.C. § 139(*l*)(1) by issuing licenses, permits, and approvals for the West Davis Corridor project in the State of Utah.

The West Davis Corridor project is a proposed highway approximately 19 miles long and would be a four-lane divided highway with an average right-of-way width of 250 feet from I–15 in Farmington to Antelope Drive in Davis County, Utah. From Antelope Drive to 1800 North in West Point the project would be a 146-foot-wide, limited-access two-lane highway.

A Final Environmental Impact Statement and Section 4(f) Evaluation for the West Davis Corridor project (FEIS) was approved by FHWA on June 23, 2017, and the FHWA ROD for the project was issued on September 29, 2017. The FEIS, FHWA ROD, and other project records are available by contacting UDOT at the address provided above. The FEIS and FHWA ROD can also be viewed and downloaded from the project website at *https://westdavis.udot.utah.gov/final-eis-and-rod/.* FHWA published a notice of final federal agency action under 23 U.S.C. 139(*1*)(l) for the FEIS, FHWA ROD and all other then-final federal

agency actions for the project on October 6, 2017, and the 150-day period for filing a claim for judicial review of those actions expired on March 5, 2018.

This notice applies to USACE's approval of a permit under Section 404 of the Clean Water Act and a Record of Decision under the National Environmental Policy Act and Section 404 of the Clean Water Act issued for the West Davis Corridor project. The USACE Record of Decision was issued on May 14, 2020 and the USACE Section 404 permit was issued on May 15, 2020 (SPK–2007–01985). As described in the USACE Record of Decision and permit, in the approximately 17.5 miles of the project covered by the permit, between I–15 in Farmington and 300 North in West Point, there will be a discharge of dredged or fill material into 55.71 acres of waters of the United States, including 52.03 acres of wetlands, 0.98 acre/1,875 linear feet of perennial streams, and 2.70 acres of other open waters. The Record of Decision and Section 404 permit authorize these discharges.

The USACE Section 404 permit and Record of Decision are available by contacting USACE at the address provided above. This notice applies to the Section 404 permit and Record of Decision and all laws under which such actions were taken, including but not limited to the following laws and their implementing regulations:

1. General: National Environmental Policy Act [42 U.S.C. 4321–4351].
2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].
3. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; The Bald and Golden Eagle Protection Act [16 U.S.C. 668]; The Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C. 1801 et seq].
4. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*];
5. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
6. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377];
7. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

This notice does not reopen or extend the 150-day period for filing a claim for judicial review of any federal agency or UDOT action on the West Davis Corridor project for which a notice of agency action has been previously published under 23 U.S.C. 139(*l*)(1), including any action relied upon by the USACE in approving the Section 404 permit or Record of Decision.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139 (*l*)(1).

Issued on: May 28, 2020.

Ivan Marrero,

Division Administrator, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 2020–12207 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0445; FMCSA–2018–0052]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for three individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before July 6, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0445 or Docket No. FMCSA–2018–0052 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2018-0052* or *http://www.regulations.gov/docket?D=FMCSA-2013-0445.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2013–0445 or Docket No. FMCSA–2018–0052), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2013-0445* or *http://www.regulations.gov/docket?D=FMCSA-2018-0052.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2013-0445 or http://www.regulations.gov/docket?D=FMCSA-2018-0052* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The three individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the three applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The three drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of July and are discussed below.

As of July 1, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Jesse Hansen (MN) and Nicholas Ramirez (AL)

The drivers were included in docket number FMCSA–2018–0052. Their exemptions are applicable as of July 1, 2020, and will expire on July 1, 2022.

As of July 14, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Ronald Blount (GA)

The driver was included in docket number FMCSA–2013–0445. His exemption is applicable as of July 14, 2020, and will expire on July 14, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the three exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–12146 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0125; FMCSA–2014–0102; FMCSA–2015–0327; FMCSA–2015–0328; FMCSA–2015–0329; FMCSA–2017–0059; FMCSA–2017–0060]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 22 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below. Comments must be received on or before July 6, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0125, FMCSA–2014–0102, FMCSA–2015–0327, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0059, or FMCSA–2017–0060 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2013–0125, FMCSA–2014–0102, FMCSA–2015–0327, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0059, or FMCSA–2017–0060), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2013–0125, FMCSA–2014–0102, FMCSA–2015–0327, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0059, or FMCSA–2017–0060, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2013–0125, FMCSA–2014–0102, FMCSA–2015–0327, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0059, or FMCSA–2017–0060, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no

longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

The 22 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 22 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 22 drivers in this notice remain in good standing with the Agency. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of June and are discussed below.

As of June 17, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Paul Aseka (TX)
James Bogart (KS)
Thomas Buretz (FL)
Glenn Ferguson (TX)
Anthony Panto (NJ)
William Symonds (IL)
Steven Tipton (IA)
Daniel Tricolici (MA)
Wayne Turner (IL)
Fernando Velasquez (TX)
Scott Weeaks (OK)

The drivers were included in docket numbers FMCSA–2013–0125, FMCSA–2015–0327, FMCSA–2015–0328, FMCSA–2015–0329, and FMCSA–2017–0059. Their exemptions are applicable as of June 17, 2020, and will expire on June 17, 2022.

As of June 25, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Alfredo Ramirez (TX)
Julie Ramirez (TX)
Hayden Teesdale (TX)

The drivers were included in docket number FMCSA–2014–0102. Their exemptions are applicable as of June 25, 2020, and will expire on June 25, 2022.

As of June 29, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Robert Cates (NM)
Leroy Carter (OH)
Brodey DiPasquale (MD)
Richard Fisher (PA)
Kimberly Foss (OR)
Dustin McFaddin (TX)
Marcel Paul (WA)
Jason Winemiller (IL)

The drivers were included in docket number FMCSA–2017–0060. Their exemptions are applicable as of June 29, 2020, and will expire on June 29, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must report any crashes or accidents as defined in § 390.5; and (2) report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–12192 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2004–17195; FMCSA–2005–22194; FMCSA–2006–23773; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0011; FMCSA–2010–0050; FMCSA–2010–0082; FMCSA–2011–0366; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2012–0106; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2015–0056; FMCSA–2015–0347; FMCSA–2015–0348; FMCSA–2015–0351; FMCSA–2016–0024; FMCSA–2016–0028; FMCSA–2016–0029; FMCSA–2017–0017; FMCSA–2017–0024; FMCSA–2018–0012]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 72 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before July 6, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1999–6156, Docket No. FMCSA–1999–6480, Docket No. FMCSA–2004–17195, Docket No. FMCSA–2005–22194, Docket No. FMCSA–2006–23773, Docket No. FMCSA–2006–24015, Docket No. FMCSA–2006–24783, Docket No. FMCSA–2007–0071, Docket No. FMCSA–2007–27897, Docket No. FMCSA–2008–0021, Docket No. FMCSA–2009–0011, Docket No. FMCSA–2010–0050, Docket No. FMCSA–2010–0082, Docket No. FMCSA–2011–0366, Docket No. FMCSA–2011–0379, Docket No. FMCSA–2012–0104, Docket No. FMCSA–2012–0106, Docket No. FMCSA–2013–0029, Docket No. FMCSA–2013–0165, Docket No. FMCSA–2013–0166, Docket No. FMCSA–2013–0167, Docket No. FMCSA–2013–0169, Docket No. FMCSA–2013–0174, Docket No. FMCSA–2014–0002, Docket No. FMCSA–2014–0003, Docket No. FMCSA–2014–0004, Docket No. FMCSA–2014–0005, Docket No. FMCSA–2014–0006, Docket No. FMCSA–2015–0056, Docket No. FMCSA–2015–0347, Docket No. FMCSA–2015–0348, Docket No. FMCSA–2015–0351, Docket No. FMCSA–2016–0024, Docket No. FMCSA–2016–0028, Docket No. FMCSA–2016–0029, Docket No. FMCSA–2017–0017, Docket No. FMCSA–2017–0024, or Docket No. FMCSA–2018–0012 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2004–17195; FMCSA–2005–22194; FMCSA–2006–23773; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0011; FMCSA–2010–0050; FMCSA–2010–0082; FMCSA–2011–0366; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2012–0106; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2015–0056; FMCSA–2015–0347; FMCSA–2015–0348; FMCSA–2015–0351; FMCSA–2016–0024; FMCSA–2016–0028; FMCSA–2016–0029; FMCSA–2017–0017; FMCSA–2017–0024; FMCSA–2018–0012), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2004–17195; FMCSA–2005–22194; FMCSA–2006–23773; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0011; FMCSA–2010–0050; FMCSA–2010–0082; FMCSA–2011–0366; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2012–0106; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2015–0056; FMCSA–2015–0347; FMCSA–2015–0348; FMCSA–2015–0351; FMCSA–2016–0024; FMCSA–2016–0028; FMCSA–2016–0029; FMCSA–2017–0017; FMCSA–2017–0024; FMCSA–2018–0012, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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C. Privacy Act

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II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 72 individuals listed in this notice have requested renewal of their exemptions from the vision standard in § 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 72 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 64 FR 54948; 64 FR 68195; 65 FR 159; 65 FR 20251; 67 FR 10475; 67 FR 38311; 69 FR 8260; 69 FR 17263; 69 FR 26921; 69 FR 31447; 70 FR 57353; 70 FR 72689; 71 FR 6824; 71 FR 6826; 71 FR 14566; 71 FR 19602; 71 FR 27033; 71 FR 30227; 71 FR 32183; 71 FR 41310; 72 FR 39879; 72 FR 52419; 73 FR 6242; 73 FR 11989; 73 FR 15567; 73 FR 16950; 73 FR 27014; 73 FR 27015; 73 FR 28186; 73 FR 36955; 74 FR 41971; 75 FR 9477; 75 FR 9480; 75 FR 13653; 75 FR 14656; 75 FR 19674; 75 FR 22176; 75 FR 25917; 75 FR 27622; 75 FR 27623; 75 FR 28682; 75 FR 36778; 75 FR 36779; 75 FR 39729; 76 FR 54530; 77 FR 5874; 77 FR 13689; 77 FR 15184; 77 FR 17107; 77 FR 17108; 77 FR 17117; 77 FR 23797; 77 FR 26816; 77 FR 27847; 77 FR 27850; 77 FR 29447; 77 FR 33017; 77 FR 36338; 77 FR 38384; 77 FR 38386; 77 FR 44708; 78 FR 34143; 78 FR 47818; 78 FR 52602; 78 FR 62935; 78 FR 63307; 78 FR 64271; 78 FR 64274; 78 FR 76395; 78 FR 77778; 78 FR 78477; 79 FR 1908; 79 FR 2748; 79 FR 10611; 79 FR 13085; 79 FR 14331; 79 FR 14333; 79 FR 14571; 79 FR 18391; 79 FR 18392; 79 FR 21996; 79 FR 22003; 79 FR 23797; 79 FR 27043; 79 FR 27681; 79 FR 28588; 79 FR 29495; 79 FR 29498; 79 FR 35212; 79 FR 35218; 79 FR 35220; 79 FR 38649; 79 FR 38661; 79 FR 47175; 80 FR 59225; 80 FR 59230; 81 FR 1284; 81 FR 1474; 81 FR 6573; 81 FR 15401; 81 FR 17237; 81 FR 20433; 81 FR 20435; 81 FR 21655; 81 FR 28136; 81 FR 28138; 81 FR 39320; 81 FR 42054; 81 FR 48493; 81 FR 52516; 81 FR 66718; 81 FR 66720; 81 FR 66722; 81 FR 81230; 81 FR 90050; 81 FR 91239; 81 FR 96196; 82 FR 20962; 82 FR 37499; 82 FR 58262; 83 FR 6919; 83 FR 6922; 83 FR 6925; 83 FR 15195; 83 FR 15232; 83 FR 24146; 83 FR 28320; 83 FR 28325; 83 FR 28332; 83 FR 45749). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at § 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of July and are discussed below. As of July 8, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 46 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 68195; 65 FR 20251; 67 FR 38311; 69 FR 17263; 69 FR 26921; 69 FR 31447; 70 FR 57353; 70 FR 72689; 71 FR 6826; 71 FR 14566; 71 FR 19602; 71 FR 27033; 71 FR 30227;

72 FR 39879; 72 FR 52419; 73 FR 6242; 73 FR 11989; 73 FR 15567; 73 FR 16950; 73 FR 27014; 73 FR 27015; 73 FR 28186; 74 FR 41971; 75 FR 9477; 75 FR 9480; 75 FR 13653; 75 FR 14656; 75 FR 19674; 75 FR 22176; 75 FR 27622; 75 FR 27623; 75 FR 28682; 76 FR 54530; 77 FR 5874; 77 FR 13689; 77 FR 15184; 77 FR 17107; 77 FR 17108; 77 FR 17117; 77 FR 23797; 77 FR 26816; 77 FR 27847; 77 FR 27850; 77 FR 29447; 77 FR 38386; 78 FR 34143; 78 FR 47818; 78 FR 52602; 78 FR 62935; 78 FR 63307; 78 FR 64271; 78 FR 64274; 78 FR 76395; 78 FR 77778; 78 FR 78477; 79 FR 1908; 79 FR 2748; 79 FR 10611; 79 FR 13085; 79 FR 14331; 79 FR 14333; 79 FR 14571; 79 FR 18391; 79 FR 18392; 79 FR 21996; 79 FR 22003; 79 FR 23797; 79 FR 27043; 79 FR 27681; 79 FR 28588; 79 FR 29495; 79 FR 29498; 79 FR 38649; 80 FR 59225; 80 FR 59230; 81 FR 1284; 81 FR 1474; 81 FR 6573; 81 FR 15401; 81 FR 17237; 81 FR 20433; 81 FR 20435; 81 FR 21655; 81 FR 28136; 81 FR 28138; 81 FR 48493; 81 FR 52516; 81 FR 66718; 81 FR 91239; 81 FR 96196; 82 FR 20962; 82 FR 37499; 82 FR 58262; 83 FR 6919; 83 FR 6922; 83 FR 6925; 83 FR 15195; 83 FR 15232; 83 FR 24146; 83 FR 28325; 83 FR 28332):

Larry Adams, Jr. (FL)
Dean R. Allen (OR)
Scott E. Ames (ME)
Alphonso A. Barco (SC)
Craig J. Belles (NY)
Dwight A. Bennett (MD)
Kolby Blackner (UT)
Bobby R. Brooks (GA)
Levi A. Brown (MT)
William Bucaria, Jr. (FL)
Edwin L. Bupp (PA)
Estra Cadet (FL)
Michael B. Canedy (MN)
Freddie A. Carrasquillo (TX)
William C. Christy (FL)
Steven W. Day (MO)
Johnny Dillard (SC)
Ryan C. Dugan (NY)
Paul W. Fettig (SD)
Brian R. Gallagher (TX)
Brian W. Gillund (MN)
Horace N. Goss (TX)
James B. Grega (PA)
Daniel W. Henderson (TN)
John C. Henricks (OH)
Michael T. Huso (MN)
William D. Jackson (MN)
Danny J. Johnson (MN)
Thomas M. Kaley (PA)
James M. Knef (NJ)
Ty N. Mason (PA)
Richard J. McKenzie, Jr. (MD)
Christopher J. Meerten (OR)
Elmore Nicholson, Jr. (AL)
Thomas G. Ohlson (NY)
John L. Ratayczak (WI)
LeRoy W. Scharkey (MN)
James S. Seeno (NV)
Thomas W. Smith (PA)
Steven S. Smith, Jr. (PA)
Russell J. Soland (MN)
Michael J. Tisher (AK)
Peter A. Troyan (MI)
Willard H. Weerts (IL)
Marvin L. Wernimont (IA)
Richard W. Wylie (CT)

The drivers were included in docket numbers FMCSA–1999–6480; FMCSA–2004–17195; FMCSA–2005–22194; FMCSA–2006–23773; FMCSA–2006–24015; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0011; FMCSA–2010–0050; FMCSA–2011–0366; FMCSA–2011–0379; FMCSA–2012–0104; FMCSA–2013–0029; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2014–0005; FMCSA–2015–0056; FMCSA–2015–0347; FMCSA–2015–0348; FMCSA–2015–0351; FMCSA–2016–0024; FMCSA–2017–0017; and FMCSA–2017–0024. Their exemptions are applicable as of July 8, 2020, and will expire on July 8, 2022.

As of July 12, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (75 FR 25917; 75 FR 39729; 77 FR 36338; 79 FR 35220; 81 FR 81230; 83 FR 28325):

Clare H. Buxton (MI)

The driver was included in docket number FMCSA–2010–0082. The exemption is applicable as of July 12, 2020, and will expire on July 12, 2022.

As of July 19, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 39320; 81 FR 66720; 83 FR 28320; 83 FR 28325; 83 FR 45749):

Louis D. Faw (NC)
Ryan N. Goyne (AR)
Bradley C. Helsel (OR)
Kenneth B. Julian (OK)
Keith Kebschull (IL)
Jeffrey N. Lake (IL)
James K. Matthey (PA)
J. B. Rodriguez Mata (TX)
Corey L. Spring (AR)
Travis D. Summerville (IL)
Lora D. Swindall (AL)
Francis J. Toth (PA)

The drivers were included in docket numbers FMCSA–2016–0028; and FMCSA–2018–0012. Their exemptions are applicable as of July 19, 2020, and will expire on July 19, 2022.

As of July 20, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 54948; 65 FR 159; 67 FR 10475; 69 FR 8260; 71 FR 6824; 71 FR 32183; 71 FR 41310; 73 FR 11989; 73 FR 36955; 75 FR 36778; 75 FR 36779; 77 FR 38384; 79 FR 35218; 81 FR 90050; 81 FR 96196; 83 FR 28325):

Daniel R. Franks (OH)
Larry L. Jarvis (VA)
Charles E. Johnston (MO)

The drivers were included in docket numbers FMCSA–1999–6156; and FMCSA–2006–24783. Their exemptions are applicable as of July 20, 2020, and will expire on July 20, 2022.

As of July 22, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following five individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 35212; 79 FR 47175; 81 FR 96196; 83 FR 28325):

Abdulahi Abukar (KY)
Gregory K. Banister (SC)
Amanuel W. Behon (WA)
Bradley C. Hansell (OR)
Seth D. Sweeten (ID)

The drivers were included in docket number FMCSA–2014–0006. Their exemptions are applicable as of July 22, 2020, and will expire on July 22, 2022.

As of July 29, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 42054; 81 FR 66722; 83 FR 28325):

David L. Evers (MN)
Michael E. Jones (IL)
Noel V. Munoz (NM)

The drivers were included in docket number FMCSA–2016–0029. Their exemptions are applicable as of July 29, 2020, and will expire on July 29, 2022.

As of July 30, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315, the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 33017; 77 FR 44708; 79 FR 38661; 81 FR 96196; 83 FR 28325):

Damon G. Gallardo (CA)
Gregory A. Reinert (MN)

The drivers were included in docket number FMCSA–2012–0106. Their exemptions are applicable as of July 30, 2020, and will expire on July 30, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified medical examiner (ME), as defined by § 390.5, who attests that the driver is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 72 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in § 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–12197 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0109; FMCSA–2013–0444; FMCSA–2015–0322; FMCSA–2018–0050]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 12 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before July 6, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0109; Docket No. FMCSA–2013–0444, Docket No. FMCSA–2015–0322, or Docket No. FMCSA–2018–0050 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
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- *Fax:* (202) 493–2251.

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FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

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FMCSA will consider all comments and material received during the comment period.

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0322; FMCSA–2018–0050, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

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II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The 12 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 12 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 12 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of June and are discussed below.

As of June 9, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Henry Counts, Jr. (MD)
David P. Crowe (VA)
Michael D. Davis (ME)
Dennis Gilles (IN)
Eric McVetty (NH)
Stephen Soden (LA)
Kevin L. Sprinkle (NC)
Alan K. Washabaugh (PA)

The drivers were included in docket numbers FMCSA–2013–0109; FMCSA–2015–0322; FMCSA–2018–0050. Their exemptions are applicable as of June 9, 2020, and will expire on June 9, 2022.

As of June 24, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Heath Crowe (LA)
Domenick Panfile (NJ)
Thomas Tincher (NC)
Duane Troff (MN)

The drivers were included in docket number FMCSA–2013–0444. Their exemptions are applicable as of June 24, 2020, and will expire on June 24, 2022.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

[1] These criteria may be found in Appendix A To Part 391—Medical Advisory Criteria, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

VII. Conclusion

Based on its evaluation of the 12 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–12194 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0077]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GIGSPACE H20 (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 6, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0077 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0077 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0077, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GIGSPACE H20 is:

—Intended Commercial Use of Vessel: Our vessel will be used to carry up to a maximum of 12 passengers who are engaged in safe boating education, and instruction, as well as site seeing throughout the ports she serves.

—Geographic Region Including Base of Operations: ''California'' (Base of Operations: San Diego, CA)

—Vessel Length and Type: 43' sailing catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0077 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov.,* keyword search MARAD–2020–0077 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Maritime Administrator.

Dated: June 2, 2020.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–12171 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2020–0075]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel AZETA (Sailing Catamaran); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before July 6, 2020.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2020–0075 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Search MARAD–2020–0075 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2020–0075, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel AZETA is:

—*Intended Commercial Use of Vessel:* ''Luxury high end sightseeing and vacation charter from half day to 7 day inclusive of food and activities such as kayaking, fishing, snorkeling, scuba diving, music entertainment.''

—*Geographic Region Including Base of Operations:* ''Florida, Alabama, Louisiana, Mississippi, Texas'' (Base of Operations: St. Petersburg, FL)

—*Vessel Length and Type:* 51′ catamaran

The complete application is available for review identified in the DOT docket as MARAD–2020–0075 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *http://www.regulations.gov,* keyword search MARAD–2020–0075 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

Dated: June 2, 2020.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2020–12172 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications For New Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before July 6, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 1, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
21049–N	Ferrellgas, L.P	180.205(c)	To authorize the transportation in commerce of 2,338 filled cylinders that had not been requalified before the requalification became due. (mode 1).
21051–N	Lab Vendor, LLC	173.196(a), 173.196(b), 173.199(a), 173.199(d), 178.603, 178.609(d).	To authorize the transportation of certain chemicals and cryogenically preserved (refrigerated and deep frozen) infectious, biological substances packaged in special packaging in a specially designed, dedicated refrigerated truck by highway. (mode 1).
21053–N	Wisconsin Central Ltd	172.203(a), 174.24, 174.26(a)	To authorize the use of electronic means to maintain and communicate on-board train consist and shipping paper information in lieu of paper documentation when hazardous materials are transported by rail. (mode 2).
21054–N	Siemens Energy, Inc	173.56(b)	To authorize the transportation in commerce of a Class 1 material under an alternate Class 1 designation. (modes 1, 4).
21055–N	AVL Powertrain Engineering, Inc.	172.101(j), 173.185(a)(1), 173.185(b)(3)	To authorize the transportation in commerce of a single prototype lithium ion battery that exceeds 35 kg aboard cargo-only aircraft. (mode 4).
21056–N	Cummins Inc	173.185(a)(1)	To authorize the transportation in commerce of prototype lithium batteries by cargo-only aircraft. (mode 4).
21057–N	Spaceflight, Inc	173.185(a)(1)	To authorize the transportation in commerce of low production lithium ion batteries contained in equipment via cargo-only aircraft. (mode 4).
21058–N	Versum Materials, Inc	180.209	To authorize the transportation in commerce of cylinders with a water capacity not exceeding 125 lbs. that have been retested every 10 years as opposed to the 5-year retest frequency required in § 180.209. In addition, it is requested that the special permit provide relief from § 180.209(b)(1)(iv) in that combined acoustic emission and ultrasonic examination (AE/UE) or 100% UE methods are authorized in lieu of hydrostatic testing. (modes 1, 2, 3).
21059–N	Union Pacific Railroad Company Inc.	172.203(a), 174.24, 174.26(a)	To authorize the use of electronic means to maintain and communicate on-board train consist information in lieu of paper documentation when hazardous materials are transported by rail. (mode 2).
21060–N	Central Specialties, Inc		To authorize the transportation in commerce of storage tanks for the purpose of transporting liquefied petroleum gas. (mode 1).

[FR Doc. 2020–12120 Filed 6–4–20; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Applications for Modifications to Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 22, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 1, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
10814–M	Spellman High Voltage Electronics Corporation.	173.302a	To modify the special permit to update the reference drawings in the permit. (modes 1, 2, 3, 4, 5)
11054–M	Welker, Inc	173.301(f)(2), 173.302a(a)(1), 173.304a(a)(1), 173.304a(d)(3)(i), 173.201(c), 173.202(c), 173.203(c), 177.840(a)(1), 178.36(h), 178.36(m).	To modify the special permit to authorize an exemption from § 178.36(h) for thread shear on cylinder tie bolts and to correct size descriptions on some authorized cylinders. (modes 1, 2, 3, 4)
11859–M	Cobham Mission Systems Orchard Park Inc.	173.301(f), 173.302a(a), 178.65.	To modify the special permit to authorize the use of Argon in a missile gas storage system. (modes 1, 2, 4)
12102–M	Haz Mat Services, Incorporated.	173.56(i)	To modify the special permit to authorize additional Class 3 and Division 4.1 explosives. (modes 1, 3)
12303–M	Halliburton Company	173.201, 173.301(f), 173.302a, 173.304a.	To modify the special permit to provide revised drawings for the RDT sample chamber arrangement covered by the special permit. (modes 1, 2, 3, 4)
14301–M	Gascon A Division Of Southey Holdings (Pty) Ltd.	178.274(b)(1), 178.276(a)(2), 178.276(b)(1).	To modify the special permit to authorize a new calculation method for calculating allowable external pressure. (modes 1, 2, 3)
14656–M	Purepak Technology Corporation.	173.158(f)(3)	To modify the special permit to authorize an additional marking option to the outside of the package. (modes 1, 2, 3)
14784–M	Weldship Corporation	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to clarify that either AE/UE or 100% UE testing is authorized for the ten year requalification period of cylinders. (modes 1, 2, 3)

[FR Doc. 2020–12121 Filed 6–4–20; 8:45 am]

BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Hazardous Materials: Notice of Actions on Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of actions on special permit applications; request for comments.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein.

DATES: Comments must be received on or before July 6, 2020.

ADDRESSES: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Donald Burger, Chief, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast,

Washington, DC 20590–0001, (202) 366–4535.

SUPPLEMENTARY INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 1, 2020.

Donald P. Burger,

Chief, General Approvals and Permits Branch.

SPECIAL PERMITS DATA—GRANTED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
10704–M	Airgas USA, LLC	172.200, 172.400, 172.500, 173.302(a), 174.1, 177.800.	To modify the special permit to authorize additional 2.2 hazmat.
11911–M	Transfer Flow, Inc	177.834(h), 178.700(c)(1)	To modify the special permit to authorize two new fuel cap designs.
12479–M	Luxfer Inc	173.302a(a)(1)	To modify the special permit to authorize passenger carrying vessel as a mode of transport.
13270–M	Joyson Safety Systems Acquisition LLC.	173.301(a)(1), 173.302(a)	To modify the special permit to remove the five year from manufacture date restriction for transporting.
14175–M	Praxair, Inc	180.209(b)(1)(iii), 180.209(b)(1)(iv).	To modify the special permit to clarify what is a package and what is a packaging and to authorize a 10-year retest interval for individual DOT specification 3A or 3AA cylinders, not exceeding 125 pounds water capacity configured into bundles.
14601–M	Gulbrandsen Chemicals, Inc	173.302a(a)(1)	To modify the special permit to authorize the option of removing the safety relief system from non-DOT specification spherical pressure vessels manufactured in accordance with the special permit.
15848–M	Ambri Inc	173.222(c)(1)	To modify the special permit to clarify certain batteries, cells and power systems and the marking requirements for them and to authorize party status to the special permit.
20324–M	General Dynamics Mission Systems, Inc.	172.101(j), 173.185(a)(1)(i)	To modify the special permit to authorize the transportation in commerce of slightly modified designs of approved batteries and cells.
20669–M	Louisiana Energy Services, Llc.	173.420	To modify the special permit to authorize natural uranium.
20825–M	Space Exploration Technologies Corp.	172.300, 172.400, 173.302(a)	To modify the special permit to authorize additional origination and destination locations.
20907–M	Versum Materials, Inc	171.23(a), 171.23(a)(3)	To modify the special permit to remove the requirement for a dedicated fleet for delivery and allow 3rd party vendors to make deliveries.
20942–N	Better Horse Inc	172.101(i)(1), 172.200(a), 172.320(a), 172.400(a), 172.500(a), 173.60(a), 173.63(b).	To authorize the transportation in commerce of the Division 1.4S articles specified herein as limited quantities.
20969–N	Porsche Logistik Gmbh	172.101(j)	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft.
20994–N	SK Innovation Co., Ltd	172.101(j)	To authorize the transportation in commerce of lithium ion batteries that exceed 35 kg by cargo-only aircraft.
20996–N	Norfolk Southern Railway Company.	174.85(a)	To authorize the transportation in commerce of hazardous materials by rail without buffer cars between placarded cars and engines.
21004–M	Actia Corporation	173.185(e)	To modify the special permit to authorize up to 150 low production lithium ion batteries to be shipped by motor vehicle.
21019–N	Halpern Import Company	173.308(c)(2)	To authorize the transportation in commerce of lighters in non-DOT specification packaging by private or contract motor carrier, or by common carrier in a motor vehicle under exclusive use, between manufacturing sites, distribution centers and retail outlets.
21024–N	Spaceflight, Inc	173.185(a)	To authorize the transportation in commerce of low production lithium batteries contained in equipment that exceed 35 kg by cargo-only aircraft.
21046–N	CSX Transportation, Inc	172.203(a), 174.26	To authorize the use of electronic means to maintain and communicate onboard train consist information in place of using paper documentation when hazardous materials are transported by rail, subject to special conditions as prescribed in the special permit. (mode 2).
21052–N	Siena Plastics LLC	178.601(g)(5)(ii), 178.606	To authorize the manufacture, mark, sale and use of plastic jerricans that have not passed the 28 day stack test. COVID–19 request for hand sanitizer (mode 1).

SPECIAL PERMITS DATA—DENIED

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
15347–M	Raytheon Missile Systems Co	173.301, 173.302a	To modify the special permit to authorize passenger carrying aircraft as a mode of transportation.
20874–N	Zhejiang Terong Machinery Co., Ltd.		To authorize the transportation in commerce of 2P containers containing liquefied gas.
21005–N	Federal Cartridge Company	172.203(a), 173.56(h)	To authorize the transportation in commerce of "small arms" not conforming to the definition of cartridges, small arms as UN0014.
21007–N	Tradewater LLC	173.306(a)(1)	To authorize the transportation in commerce of refrigerant gases as limited quantities when in receptacles exceeding 4 fluid ounces.
21023–N	Tire Seal, Inc	173.304(d)	To authorize the manufacture, mark, sale, and use of certain non-DOT specification inner containers for the transportation in commerce of the hazardous materials authorized by this special permit.
21039–N	Advance Stores Company Incorporated.	173.6	To authorize the transportation in commerce of hazardous materials by third-party delivery services as materials of trade in quantities that exceed what is currently authorized.

SPECIAL PERMITS DATA—WITHDRAWN

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
20991–N	Veolia ES Technical Solutions, LLC.	173.51, 173.54(a), 173.56(b), 173.21(b).	To authorize the one-time, one-way transportation of unapproved cartridges for tools for the purpose of disposal.
21017–N	GBF, Inc	173.199(e)	To authorize the transportation in commerce of Category B infectious substances (COVID–19) without requiring shippers to have the required training.
21038–N	Volvo Cars Of North America, LLC.	172.101(j)	To authorize the transportation in commerce of lithium ion batteries exceeding 35 kg net weight by cargo-only aircraft.

[FR Doc. 2020–12122 Filed 6–4–20; 8:45 am]
BILLING CODE 4909–60–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number DOT–OST–2014–0031]

Agency Information Collection: Activity Under OMB Review; Report of Traffic and Capacity Statistics—The T–100 System

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of DOT requiring U.S. and foreign air carriers to file traffic and capacity data pursuant to 14 CFR 241.19 and Part 217, respectively. These reports are used to measure air transportation activity to, from, and within the United States.

DATES: Written comments should be submitted by July 6, 2020.

Comments: Comments should identify the associated OMB approval # 2138–0040 and Docket ID Number DOT–OST–2014–0031. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0040, Docket—DOT–OST–2014–0031. The postcard will be date/time stamped and returned.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access

You may access comments received for this notice at *http://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

FOR FURTHER INFORMATION CONTACT: Jennifer Rodes, Office of Airline Information, RTS–42, Room E34–420, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–8513, Fax Number (202) 366–3383 or EMAIL *jennifer.rodes@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0040.

Title: Report of Traffic and Capacity Statistics—The T–100 System.

Form No.: Schedules T–100 and T–100(f).

Type of Review: Extension of a currently approved collection.

Respondents: Certificated, commuter and foreign air carriers that operate to, from or within the United States.

T100 Form

Number of Respondents: 119.
Number of Annual responses 1,428.
Total Burden per Response: 6 hours.
Total Annual Burden: 8,568 hours.

T100F Form

Number of Respondents: 190.
Number of Annual responses 2,280.
Total Burden per Response: 2 hours.
Total Annual Burden: 4,560 hours.
Needs and Uses:

Airport Improvement

The Federal Aviation Administration uses enplanement data for U.S. airports to distribute the annual Airport Improvement Program (AIP) entitlement funds to eligible primary airports, *i.e.,* airports which account for more than 0.01 percent of the total passengers enplaned at U.S. airports. Enplanement data contained in Schedule T–100/T–100(f) are the sole data base used by the FAA in determining airport funding. U.S. airports receiving significant service from foreign air carriers operating small aircraft could be receiving less than their fair share of AIP entitlement funds. Collecting Schedule T–100(f) data for small aircraft operations will enable the FAA to more fairly distribute these funds.

Air Carrier Safety

The FAA uses traffic, operational and capacity data as important safety indicators and to prepare the air carrier traffic and operation forecasts that are used in developing its budget and staffing plans, facility and equipment funding levels, and environmental impact and policy studies. The FAA monitors changes in the number of air carrier operations as a way to allocate inspection resources and in making decisions as to increased safety surveillance. Similarly, airport activity statistics are used by the FAA to develop airport profiles and establish priorities for airport inspections.

Acquisitions and Mergers

While the Justice Department has the primary responsibility over air carrier acquisitions and mergers, the Department reviews the transfer of international routes involved to determine if they would substantially reduce competition, or determine if the transaction would be inconsistent with the public interest. In making these determinations, the proposed transaction's effect on competition in the markets served by the affected air carriers is analyzed. This analysis includes, among other things, a consideration of the volume of traffic and available capacity, the flight segments and origins-destinations involved, and the existence of entry barriers, such as limited airport slots or gate capacity. Also included is a review of the volume of traffic handled by each air carrier at specific airports and in specific markets which would be affected by the proposed acquisition or merger. The Justice Department uses T–100 data in carrying out its responsibilities relating to airline competition and consolidation.

Traffic Forecasting

The FAA uses traffic, operational and capacity data as important safety indicators and to prepare the air carrier traffic and operation forecasts. These forecast are used by the FAA, airport managers, the airlines and others in the air travel industry as planning and budgeting tools.

Airport Capacity Analysis

The mix of aircraft types are used in determining the practical annual capacity (PANCAP) at airports as prescribed in the FAA Advisory Circular *Airport Capacity Criteria Used in Preparing the National Airport Plan.* The PANCAP is a safety-related measure of the annual airport capacity or level of operations. It is a predictive measure which indicates potential capacity problems, delays, and possible airport expansions or runway construction needs. If the level of operations at an airport exceeds PANCAP significantly, the frequency and length of delays will increase, with a potential concurrent risk of accidents. Under this program, the FAA develops ways of increasing airport capacity at congested airports.

Airline Industry Status Evaluations

The Department apprizes Congress, the Administration and others of the effect major changes or innovations are having on the air transportation industry. For this purpose, summary traffic and capacity data as well as the detailed segment and market data are essential. These data must be timely and inclusive to be relevant for analyzing emerging issues and must be based upon uniform and reliable data submissions that are consistent with the Department's regulatory requirements.

Mail Rates

The Department is responsible for establishing international and intra-Alaska mail rates. International mail rates are set based on scheduled operations in four geographic areas: Trans-border, Latin America, operations over the Atlantic Ocean and operations over the Pacific Ocean. Separate rates are set for mainline and bush Alaskan operations. The rates are updated every six months to reflect changes in unit costs in each rate-making entity. Traffic and capacity data are used in conjunction with cost data to develop the required unit cost data.

Essential Air Service

The Department reassesses service levels at small domestic communities to assure that capacity levels are adequate to accommodate current demand.

System Planning at Airports

The FAA is charged with administering a series of grants that are designed to accomplish the necessary airport planning for future development and growth. These grants are made to state metropolitan and regional aviation authorities to fund needed airport systems planning work. Individual airport activity statistics, nonstop market data, and service segment data are used to prepare airport activity level forecasts.

Review of IATA Agreements

The Department reviews all of the International Air Transport Association (IATA) agreements that relate to fares, rates, and rules for international air transportation to ensure that the agreements meet the public interest criteria. Current and historic summary traffic and capacity data, such as revenue ton-miles and available ton-miles, by aircraft type, type of service, and length of haul are needed to conduct these analyses: To (1) develop the volume elements for passenger/cargo cost allocations, (2) evaluate fluctuations in volume of scheduled and charter services, (3) assess the competitive impact of different operations such as charter versus scheduled, (4) calculate load factors by aircraft type, and (5) monitor traffic in specific markets.

Foreign Air Carriers Applications

Foreign air carriers are required to submit applications for authority to operate to the United States. In reviewing these applications the Department must find that the requested authority is encompassed in a bilateral agreement, other intergovernmental understanding, or that granting the application is in the public interest. In the latter cases, T–100 data are used in assessing the level of benefits that carriers of the applicant's homeland presently are receiving from their U.S. operations. These benefits are compared and balanced against the benefits U.S. carriers receive from their operations to the applicant's homeland.

Air Carrier Fitness

The Department determines whether U.S. air carriers are and continue to be fit, willing and able to conduct air service operations without undue risk to passengers and shippers. The Department monitors a carrier's load factor, operational, and enplanement data to compare with other carriers with similar operating characteristics. Carriers that expand operations at a high rate are monitored more closely for safety reasons.

International Civil Aviation Organization

Pursuant to an international agreement, the United States is obligated to report certain air carrier data to the International Civil Aviation Organization (ICAO). The traffic data supplied to ICAO are extracted from the U.S. air carriers' Schedule T–100 submissions.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued on May 13, 2020.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2020–12159 Filed 6–4–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: U.S. Treasury Auction Submitter Agreement

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 Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the U.S. Treasury Auction Submitter Agreement.

DATES: Written comments should be received on or before August 4, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006–A, PO Box 1328, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Treasury Auction Submitter Agreement.

OMB Number: 1530–0056.

Form Number: FS Form 5441 and FS Form 5441–2.

Abstract: The information is requested from entities wishing to participate in U.S. Treasury Securities auctions via TAAPS.

Current Actions: Revision of a currently approved collection.

Type of Review: Regular.

Affected Public: Depository Institutions, Brokers/Dealers, Assessment Management Companies, Pension Funds, and other Institutional Investors.

Estimated Number of Respondents: 1,050.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 88.

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: (1) 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; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 2, 2020.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2020–12186 Filed 6–4–20; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC) will hold a virtual public meeting on Wednesday, June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Parman, Office of National Public Liaison, at (202) 317–6247, or send an email to *publicliaison@irs.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a virtual public meeting of the ETAAC will be held on Wednesday, June 24, 2020 from 9:00 a.m. to 11:00 a.m. The purpose of the ETAAC is to provide continuing advice with regard to the development and implementation of the IRS organizational strategy for electronic tax administration. ETAAC is an organized public forum for discussion of electronic tax administration issues such as prevention of identity theft and refund fraud. It supports the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs and procedures, and suggest improvements. Please call or email Sean Parman to confirm your attendance. Mr. Parman can be reached at 202–317–6247 or *PublicLiaison@irs.gov*. Should you wish

the ETAAC to consider a written statement, please call 202–317–6247 or email: *PublicLiaison@irs.gov*.

Dated: June 2, 2020.

John Lipold,

Designated Federal Official, Branch Chief, National Public Liaison.

[FR Doc. 2020–12265 Filed 6–4–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Cooperative Studies Scientific Evaluation Committee, Amended Notice of Meeting

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act that the Cooperative Studies Scientific Evaluation Committee will hold a meeting on July 15, 2020 by videoconference. The meeting will begin at 8:30 a.m. and end at 4:30 p.m.

The Committee advises the Chief Research and Development Officer on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion, and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

The Committee will not accept oral comments from the public for the open portion of the meeting. Members of the public who wish to attend the open teleconference should call 1–800–767–1750 using the passcode 22524#. Those who plan to attend or wish additional information should contact Grant Huang, MPH, Ph.D., Director, Cooperative Studies Program (10X2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at (202) 443–5700 or by email at *grant.huang@va.gov.* Those wishing to submit written comments may send them to Dr. Huang at the same address and email.

Dated: June 2, 2020.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2020–12248 Filed 6–4–20; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 85 Friday,

No. 109 June 5, 2020

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

Community Reinvestment Act Regulations; Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2018–0008]

RIN 1557–AE34

Community Reinvestment Act Regulations

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; temporary final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting a final rule to strengthen and modernize the Community Reinvestment Act (CRA) by clarifying and expanding the activities that qualify for CRA credit; updating where activities count for CRA credit; creating a more consistent and objective method for evaluating CRA performance; and providing for more timely and transparent CRA-related data collection, recordkeeping, and reporting.

DATES: This rule is effective on October 1, 2020. Banks must comply with the final amendments by October 1, 2020, January 1, 2023, or January 1, 2024, as applicable, except that appendix C to part 25 expires January 1, 2024. See **SUPPLEMENTARY INFORMATION** for compliance details.

FOR FURTHER INFORMATION CONTACT: Vonda Eanes, Director for CRA and Fair Lending Policy, Bobbie K. Kennedy, Technical Expert for CRA and Fair Lending, or Karen Bellesi, Director for Community Development, Bank Supervision Policy, (202) 649–5470; or Karen McSweeney, Special Counsel, Allison Hester-Haddad, Counsel, Emily R. Boyes, Counsel, or Elizabeth Small, Senior Attorney, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. For persons who are deaf or hearing impaired, TTY users may contact (202) 649–5597.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Office of the Comptroller of the Currency (OCC or agency) [1] is adopting a final rule [2] to strengthen and modernize implementation of the Community Reinvestment Act (CRA).[3] The OCC believes that the CRA regulatory framework must be strengthened and modernized. The goals of this reform are to make the framework more objective, transparent, consistent in application, and reflective of changes in banking. Accomplishing these goals would make the CRA framework a better tool to encourage national banks and savings associations (banks) [4] to engage in more activities to serve the needs of their communities, particularly in low- and moderate-income (LMI) communities and other communities that have been underserved under previous versions of the CRA regulatory framework. Together, the OCC-regulated banks covered by this final rule conduct a majority of all CRA activity in the United States.

The OCC has engaged stakeholders and sought public input on CRA reform over the past three years. Stakeholders generally agree with the need for reform and with the goals of increasing the amount of CRA activity, expanding the geographic scope of where CRA activities are measured, and improving the ability of regulators and the public to measure CRA activity levels. Disagreements about reform focus almost entirely on the details of how to achieve these goals under a modernized CRA regulatory framework, not whether to modernize the framework. Stakeholders' perspectives on the specific details of reform, including those expressed in the more than 1,500 comments on the OCC's Advance Notice of Proposed Rulemaking (ANPR) [5] and the more than 7,500 comments on the Notice of Proposed Rulemaking (NPR or proposal),[6] have been constructive and informative. The OCC's final rule adopts many important changes suggested by or made in response to stakeholders and, as a result, better achieves the goals of reform.

II. Overview of Final Rule

The final rule makes changes in four areas of the CRA framework. Specifically, the final rule: (1) Clarifies and expands the bank lending, investment, and services (collectively, qualifying activities or CRA activities) that qualify for positive CRA consideration; (2) updates how banks delineate the assessment areas in which they are evaluated; (3) provides additional methods for evaluating CRA performance in a consistent and objective manner; and (4) requires reporting that is timely and transparent.

The new framework incentivizes banks to achieve specific performance goals; this is in contrast to the previous rule, under which banks received ratings based primarily on a curve compared to their peers' performance. Timely and transparent CRA data, including CRA performance evaluations (CRA PEs), will provide meaningful information to all stakeholders, rather than to relatively few experts.

This final rule augments and makes changes to aspects of the current framework that have unintentionally inhibited banks' CRA activity by creating uncertainty about which activities qualify and how much those activities contribute to a bank's CRA rating. As a result, many banks engage only in CRA activities for which they previously received CRA consideration and commit capital and credit only in amounts they are confident will receive positive consideration—at the cost of innovation and responsiveness. In addition to disincentivizing all but the most clear-cut CRA activities by banks, the current framework's lack of consistent and objective evaluations and timely and transparent reporting inhibits the public's ability to understand how and to what extent banks are meeting community credit needs.

Moreover, the predominantly subjective nature of the current framework means that an individual bank's CRA rating is not a reliable indicator of the actual volume of that bank's CRA activity. In the OCC's analysis of historical CRA ratings

[1] The OCC is the primary regulator for national banks and federal savings associations.

[2] The Federal Deposit Insurance Corporation (FDIC) has elected not to join this final rule. To reflect this, the final rule includes conforming and technical changes from the Notice of Proposed Rulemaking published on Jan. 9, 2020 (85 FR 1204).

[3] Public Law 95–128, 91 Stat. 1147 (1977), *codified at* 12 U.S.C. 2901 *et seq.* The CRA was enacted to promote access to credit by encouraging banks to serve their entire communities. During this time period, in the 1960s and 1970s, Congress also enacted fair lending laws to address fairness and access to housing and credit. In 1968, Congress passed the Fair Housing Act, 42 U.S.C. 3601 *et seq.,* to prohibit discrimination in renting or buying a home. In 1974, Congress passed the Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (amended in 1976), to prohibit creditors from discriminating against an applicant on the basis of race, color, religion, national origin, sex, marital status, or age. These fair lending laws provide a legal basis for prohibiting discriminatory lending practices, such as redlining. *Interagency Fair Lending Examination Procedures,* p. iv (Aug. 2009), available at *https://www.ffiec.gov/PDF/fairlend.pdf.*

[4] The rulemaking authority of the Office of Thrift Supervision (OTS) and the Director of the OTS, respectively, relating to savings associations was transferred to the OCC in Title III of the Dodd–Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1522 (2010). As a result, the OCC has CRA rulewriting authority for both federal and state savings associations, in addition to national banks. In addition, as used throughout this rulemaking, the term bank or banks also includes uninsured federal branches that result from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

[5] 83 FR 45053 (Sept. 5, 2018).

[6] 85 FR 1204 (Jan. 9, 2020).

distributions, the agency found that it is extremely rare for banks to receive ratings in the two lowest ratings—needs to improve and substantial noncompliance. Less than three percent of banks received such ratings, while nearly 74 percent of the banks were rated satisfactory and almost 24 percent were rated outstanding.[7] Using the Home Mortgage Disclosure Act (HMDA) and CRA small business loan and small farm loan data, the agency found only a weak positive relationship between a bank's CRA rating and its CRA activities. While incorporating community development (CD) lending and investments helped explain some of the variation in CRA ratings, a significant amount of the variation remained unexplained.[8]

By moving from a system that is primarily subjective to one that is primarily objective and that increases clarity for all banks, CRA ratings will be more reliable, reproducible, and comparable overtime. Under the agency's final rule, the same facts and circumstances will be evaluated in a similar manner regardless of the particular region or particular examiner. CRA activities will be treated in a consistent manner from bank to bank.

Qualifying Activities. Since 1977, banks, regulators, community groups, and others have evaluated CRA activities in the absence of comprehensive criteria for what qualified for CRA consideration or a list of activities that have previously received credit. As a result, the activities given CRA consideration have varied from examiner to examiner, bank to bank, region to region, and time period over time period. The modernized framework in the final rule eliminates these variations in treatment.

The modernized framework sets forth criteria for qualifying activities that capture the activities that currently receive CRA consideration and are widely recognized by stakeholders as supporting community reinvestment and development. In addition, the qualifying activities criteria capture activities that are consistent with the statutory purpose of the CRA but that generally may not receive credit, such as: (1) Certain activities in identified areas of need beyond LMI areas (*i.e.,* underserved areas, distressed areas, disaster areas, Indian country and other tribal and native lands);[9] and (2) a limited set of activities that benefit a whole community, while maintaining an appropriate focus on LMI neighborhoods. Where appropriate, the criteria exclude activities that may have qualified for CRA consideration in the past, like loans to middle- and upper-income borrowers in LMI census tracts, in order to emphasize activities that support LMI populations and areas and other communities of need.

Assessment areas. The purpose of the CRA is to encourage banks to engage in CRA qualifying activities in those areas where they collect deposits. Over forty years ago (when the CRA was enacted) and through 1995 (when the last major revisions to the CRA regulatory framework were made), bank branches were the primary means by which banks gathered deposits and, in turn, delivered financial products and services to their customers. During this period, the number and placement of branches closely reflected the distribution of the areas where banks received deposits. In this historical context, the focus in the current regulations solely on branch locations for determining where bank CRA activities are considered made sense; it ensured that banks reinvest capital and credit in the communities from which they draw deposits due to their branch presence and addressed certain issues that would arise if banks took deposits from one community and lent that capital in another, perhaps more profitable or affluent, community.

Over the past 25 years, however, an increasingly large number of banks have, in whole or in part, adopted new business models in which they collect significant deposits from areas far outside of their physical branch footprint. The current regulatory framework's reliance on branch footprint as the sole basis for delineating a bank's CRA assessment areas thus no longer aligns adequately with where a given bank does business. As this misalignment grows, the gap has grown between the purpose of the CRA—to assess a bank's CRA activity where it gathers deposits—and the current framework. To close the gap, under the final rule, banks that collect deposits above a threshold percentage of their total retail domestic deposits from outside of their physical branch footprint must delineate additional assessment areas in those areas where they draw more than a certain percentage of deposits. The final rule sets the threshold percentage for requiring a bank to delineate these deposit-based assessments areas at a level that will not affect the vast majority of traditional banks but that will generally capture other banks whose business models are significantly different than the models used when the CRA regulations were last reformed, such as internet banks and banks with large amounts of deposits sourced outside of the area where its main office is located.

The final rule recognizes, however, the continuing significance of branches. The final rule retains the requirement that banks delineate assessment areas around their physical deposit-taking locations, in recognition of the importance of branches to the CRA. Branches continue to play a large and important role in meeting certain communities' needs and serving certain populations. By preserving facility-based assessment areas in the final rule, the agency continues to encourage banks to maintain their branches.

In creating a framework that equalizes treatment between traditional branch-based banks and banks that gather deposits through the internet and other non-branch-based channels, the agency has relied on its supervisory experience and judgment, as well as an understanding of the banking industry. The agency chose to leverage its experience and judgment in part because the currently available deposit data is incomplete and does not provide the depositors' locations.

Measurements. Because the CRA regulatory framework historically has not provided a consistent and objective means to measure a bank's CRA activity, examiners have been left to apply their best subjective judgment to assess a bank's performance and to assign ratings. To do this, examiners considered two primary aspects of a bank's CRA activity: (1) The distribution of the number of its retail lending activities (*i.e.,* home mortgage loans, small loans to businesses, small loans to farms, and consumer loans); and (2) and the impact of the dollar value of CD activities. When measuring the distribution of retail lending, examiners evaluated the geographic and borrower distribution of this activity. When

[7] Distribution of ratings is based on the OCC's analysis of the Federal Financial Institutions Examination Council (FFIEC) CRA data and covers over 1,500 CRA PEs published between 2006 and 2018, pertaining to banks with assets over the small bank asset size that are regulated by the OCC, FDIC, or Board of Governors of the Federal Reserve System (Board).

[8] Findings on the relationship between ratings and CRA qualifying lending activities are based on several analyses using different data sources: FFIEC CRA data for over 1,500 CRA PEs published between 2006 and 2018, pertaining to banks with assets over the small bank asset size that are regulated by the OCC, Board, or FDIC; a sample of over 200 CRA PEs completed between 2011 and 2018, pertaining to over 150 OCC-regulated banks with assets over the small bank asset size; and data compiled by the Board from nearly 1,900 CRA PEs completed between 2005 and 2017, pertaining to over 1,200 banks.

[9] As discussed below, in response to comments, the agency changed the definition of Indian country and added a new definition for other tribal and native lands in the final rule.

measuring the dollar impact of CRA activities, examiners generally measured the dollar amount of retail lending and CD activities, as well as the hours of CD services engaged in by a bank. Examiners also considered qualitative factors that are more difficult to quantify, such as responsiveness, innovativeness, and complexity. The final rule builds on these existing methods of assessing CRA performance by spelling out the distribution and impact analysis in new performance standards upon which examiners can base their judgments in determining ratings. At a later date, the agency will set the objective thresholds and benchmarks for the level of performance necessary to achieve each rating category; these thresholds and benchmarks will be applied as of the compliance date applicable to each bank.

To provide a more objective and consistent means of evaluating these activities, the final rule establishes an evaluation method that assesses a bank's retail lending and CD activities by considering: (1) The distribution of retail lending activities relative to LMI populations and LMI census tracts in a bank's assessment areas; and (2) the impact of all CRA activity, measured in dollars. Quantifying these activities will help provide a more complete picture of the impact of a bank's CRA activity. The final rule also provides quantitative credit for branches in, or that serve, LMI census tracts or other identified areas of need. Furthermore, the final rule provides for consideration of the qualitative aspects of CRA activities by including an assessment of a bank's performance context. To promote more consistent consideration of these qualitative aspects, the final rule contains performance context factors that are based on the factors in the current regulation and on input from examiners. As discussed below, the agency will issue guidance to help further standardize how examiners apply performance context in CRA evaluations.

Reporting. Under the current CRA regulatory framework, banks' CRA PEs can be extremely lengthy and in excess of 1,000 pages. CRA PEs can also be years in the making, in which case they provide an outdated and stale assessment of bank performance. They can be difficult to use, and it can be hard to draw comparisons from bank-to-bank or from one bank's evaluation to the next. As a result of the changes in the final rule, examiners will be able to produce more consistent, useful, and timely CRA PEs that will enable banks, regulators, and others to have a better understanding of the CRA activities of individual banks and of cross-sections of the industry. Over time, better data will allow the agency to adjust periodically the thresholds in the new framework (*e.g.,* for delineating deposit assessment areas and for the level of performance necessary to achieve each rating category). Objective measures, reported in a transparent manner, will allow interested parties to assess performance and progress for themselves. This information will improve and accelerate decision making by the agency and ensure that ratings are more accurate reflections of the level of CRA activity being conducted.

III. Background

The agency's current efforts to strengthen and modernize the CRA regulatory framework began in 2018 but attempts at reform have spanned the past decade. The agency, along with the Board and the FDIC, worked together on an ANPR, which the OCC issued in August 2018 and, as noted above, received more than 1,500 comments.[10] During that same period, the OCC, FDIC, and Board engaged with stakeholders, including civil rights organizations, community groups, members of Congress, academics, and banks, to obtain their perspectives and feedback on all aspects of the CRA and potential improvements that could be made to the CRA regulatory framework. While the feedback confirmed that the CRA has historically been an important tool for promoting lending, investment, and services for community revitalization in neighborhoods across the country, many stakeholders stated that the current CRA regulatory framework lacks objectivity, transparency, and fairness; is applied inconsistently; and is hard to understand. Stakeholders observed that evaluation under the current regulatory framework of banks' CRA activities—including what type of activities count, where they count, and how they count—is inconsistent, opaque, and complex.[11]

In December 2019, the OCC and FDIC (agencies) jointly released the proposal[12] noted above, which was designed to strengthen and modernize the regulations that implement the CRA. The proposed changes were designed to make the CRA regulations more objective and transparent to enable consistent application of the rule, thereby providing regulatory certainty for covered institutions.[13] Achieving these objectives would, over time, encourage insured depository institutions[14] to better meet the credit, investment, and other financial services needs of their entire communities, including LMI areas, by conducting more CRA activity and serving more of their communities, including identified areas of need. The proposal applied to insured depository institutions regulated by both the OCC and FDIC, which include national banks, federal and state savings associations, and state banks that are not members of the Federal Reserve System.

To achieve the purpose of encouraging banks to conduct more CRA activities in the communities they serve, including LMI areas, the proposal introduced changes to modernize the CRA rule to reflect changes in banking over the past 25 years. The improvements embodied in the proposed changes fell into four general categories. First, the proposal sought to clarify what bank activities qualify for positive CRA consideration. Second, the proposal sought to update how banks delineate the assessment areas in which they are evaluated. Third, the proposal sought to evaluate bank CRA performance more objectively. And fourth, the proposal sought to provide more transparent and timely reporting.

The proposal clarified which activities would have been qualifying by including detailed qualifying activities criteria and requiring the periodic publication of a non-exhaustive, illustrative list of examples of qualifying activities. The proposal also established a process for banks to seek agency confirmation that an activity is a qualifying activity.[15]

The proposal expanded where CRA activity counts by requiring banks to delineate deposit-based assessment areas where they have significant concentrations of retail domestic deposits. The proposal provided an objective method to measure CRA

[10] *Supra* note 5.

[11] 85 FR 1204, 1206 (Jan. 9, 2020).

[12] *See, e.g., OCC News Release 2019–147 (Dec. 12, 2019), available at https://occ.gov/news-issuances/news-releases/2019/nr-ia-2019-147.html; FDIC FIL–81–2019 (Dec. 13, 2019), available at https://www.fdic.gov/news/news/financial/2019/fil19081.html.* The NPR was published in the **Federal Register** on Jan. 9, 2020. *See supra 6.*

[13] Some commenters on the ANPR stated that: (1) CRA PEs and ratings are subjective and inconsistent and (2) the current framework is applied inconsistently and hard to understand.

[14] 12 U.S.C. 1813(c)(2).

[15] As discussed below, the final rule retains for certain banks the small bank performance standards in the current regulations and the community development test for wholesale and limited purpose banks, which is renamed the wholesale and limited purpose performance standards. *See* 12 CFR 25.25; 25.26; 195.25; 195.26. The agency intends for these standards to be applied consistent with the current regulations except as expressly provided for in this final rulemaking.

activity by establishing new general performance standards to evaluate CRA activities. The proposal also required banks to collect, maintain, and report certain data related to their qualifying activities, certain non-qualifying activities, retail domestic deposits, performance context, and assessment areas. As with other regulatory initiatives, the OCC would have provided guidance and assistance to help ensure compliance.[16]

These proposed changes were designed to promote greater regulatory certainty and consistency, which the agency believes will encourage banks to engage in more activities. Increased objectivity coupled with more comprehensive data collection and reporting would allow observers to know the extent of CRA activity banks are conducting, what sorts of CRA activities are being conducted, and where that activity is occurring. This additional transparency would promote greater accountability through more objective ratings and improved ability to compare a bank's performance against the industry and its peers over time.

IV. Comments Received on the NPR

The OCC received more than 7,500 comments on the proposal, representing a wide range of viewpoints.[17] These comments came from a variety of stakeholders and interested parties, including the banking industry, community and other advocacy groups, Congress, state and local governments, academia, and the general public.

Commenters endorsed the clarifications regarding qualifying activities, the establishment of a qualifying activities list, and the creation of a confirmation process. Some supported providing CRA credit for all activities that formerly qualified as economic development, and others supported credit for all legally-binding commitments to lend. Some industry commenters and community groups supported credit for all loans to non-LMI individuals in LMI areas. Other industry commenters also supported multipliers for donations, volunteer service, and qualifying activities in CRA deserts.

In contrast, many commenters expressed concern that the expanded qualifying activities criteria could divert activity from LMI individuals and communities, as well as from businesses and farms most in need of credit. Other commenters recommended that any list of examples of qualifying activities be published for public comment before inclusion in a final rule, or they simply recommended against a list. Others asserted that a list would be confusing, could discourage activities that are not listed, and would raise legal issues because of alleged procedural deficiencies with the proposed qualifying activities list confirmation process.

Some industry commenters also criticized aspects of the proposal, including that the proposal undervalued retail loans originated and sold within 90 days.

With respect to the proposal's treatment of where qualifying activities count, many commenters supported the proposed approach. Some industry commenters and community groups expressed concern, however, about the data on which the deposit-based assessment area concept was based, and some also questioned whether this concept would address CRA hot spots and credit deserts. Commenters from industry that discussed the deposit-based assessment area framework opposed the establishment of deposit-based assessment areas because of potential costs to collect additional data, concerns about the safety and soundness of lending in areas where banks have no physical presence, and the belief that these new assessment areas would exacerbate CRA hot spots and deserts. Some of these commenters generally supported retaining the facility-based assessment areas and either making changes to the proposed thresholds for deposit-based assessment areas or to the treatment of out-of-assessment area qualifying activities. Some commenters supported the ability of banks to tailor their assessment areas to geographic areas smaller than a county to reflect only the areas where banks can be reasonably expected to serve, as is possible under the current regulations.

Some community groups criticized the proposed deposit-based assessment area thresholds on the grounds that they were not adequately supported and said the proposal would either do little to alleviate or would exacerbate CRA deserts, particularly in small and rural communities. Those groups recommended: (1) Changing the proposed requirement that a bank delineate deposit-based assessment areas only if it receives 50 percent or more of its deposits from areas outside its assessment areas to a lower percentage; and (2) delineating deposit-based assessment areas based on a bank's deposit market share in given geographic markets, instead of the percentage of the particular bank's deposits, as proposed. They also expressed concern that the proposal's approach to providing banks credit for activities outside of their assessment areas was underdeveloped and would encourage banks to engage in activities that are larger in dollar value and easier to do.

The agency also received comments on the performance standards set out in the proposal. Some of these commenters supported tailored benchmarks for the CRA evaluation measure.[18] They stated that the pass/fail nature of the retail lending distribution tests,[19] CD minimums, and significant portion threshold did not provide the appropriate flexibility for the diversity of banking business models and local community conditions. Instead, they supported gradations in performance levels for these standards. Some commenters questioned whether retail domestic deposits, as defined in the proposal, is the appropriate denominator for the CRA evaluation measure.

Several industry commenters asserted that the data analysis and rationale behind the proposed performance standards were not adequately set forth in the NPR or were unclear. Some commenters requested that the agency make publicly available the relevant data and analysis upon which it relied. These commenters advocated for further data gathering and testing of the performance standards prior to the issuance of the final rule.

Community groups and other commenters expressed concern that the proposed performance standards could lead to a focus on large transactions at the expense of smaller activities, which they believe would be more responsive to community needs. They also opposed allowing a bank to receive a satisfactory overall rating automatically if it received a satisfactory rating in a

[16] As the agency has done in other circumstances, such as the current expected credit loss accounting standard that was issued in June 2016, the agency plans to develop webinars and other guidance and resources to help ensure compliance with the final rule. *See* Current Expected Credit Losses (CECL) Methodology, available at *https://www.occ.gov/topics/supervision-and-examination/bank-operations/accounting/current-expected-credit-losses/index-current-expected-credit-losses.html.*

[17] The NPR's comment period was initially set to end on Mar. 9, 2020. In response to requests from stakeholders and to ensure that members of the public had ample time to review and comment on the proposal, the comment period was extended until Apr. 8, 2020. *See* 85 FR 10996 (Feb. 26, 2020).

[18] Other commenters supported the proposed use of multipliers for certain activities. Additionally, commenters suggested that benchmarks be established for each major type of qualifying activity.

[19] Under the proposal, the retail lending distribution tests are used to evaluate a bank's retail lending activities, which include home mortgage loans, small loans to businesses, small loans to farms, and consumer loans.

significant portion of its assessment areas and in those assessment areas where it receives a significant amount of deposits. These commenters supported a more complex and subjective approach that would retain the existing tests and maintain qualitative considerations while adding quantitative guidelines, as well as additional gradations to the retail lending distribution tests.

Some industry commenters and others advocated for the small bank exemption threshold to be higher than the proposed $500 million, recommending that, at a minimum, the exemption cover banks that are intermediate small banks [20] under the current regulations. In contrast, community groups and other commenters opposed the small bank exemption or any increase in the thresholds because the small bank performance standards do not evaluate CD activity. In addition, some industry commenters voiced concerns with the NPR's treatment of banks that are designated as wholesale and limited purpose banks under the current regulations.

The OCC also received numerous comments on proposed data collection, recordkeeping, and reporting requirements. Commenters expressed concern that the costs associated with the data requirements would outweigh the benefits associated with the changes. These commenters highlighted the ongoing nature of the costs and the potential need for several additional personnel with specialized skills. These commenters also explained that most banks cannot rely on or modify their current systems to produce or maintain the data; if the requested data are available, the data are frequently stored in different systems. In some cases, the required data simply do not exist, especially for consumer loans. Commenters also emphasized the costs of geocoding deposit accounts, particularly for small banks, which may require manual research and input for a non-negligible amount of data. These commenters also explained the painstaking steps and documentation associated with validating and verifying the accuracy of the new data collection.

Other commenters suggested additional, more granular data reporting, and many community groups and individuals suggested making information collected under the final regulations publicly available. Some commenters recommended that the agency take steps to minimize data collection, recordkeeping, and reporting burdens by relying on existing datasets and data collection processes and by offering webinars and seminars to assist banks.

After carefully reviewing and considering all of the comments received, the OCC is adopting this final rule. Although commenters disagreed with the approach outlined in the proposal, the agency ultimately agreed with the minority of commenters who expressed support for the proposed framework. The lodestar for this new CRA framework is increased transparency, objectivity, and consistency in application, which will help the OCC achieve the objective of the CRA—to encourage banks to meet the credit needs of their entire communities, including LMI individuals and areas. The agency is also cognizant that not every aspect of every CRA activity can be quantified and, for those items, it has sought to qualitatively capture the subjective elements. This new framework will strengthen and modernize the CRA regulations and encourage banks to more effectively help meet the credit needs of their entire communities, including LMI individuals and communities, by conducting more CRA activities and serving more of their communities. In the OCC's view, these outcomes better align with, and thus are a better way to implement the CRA statute than, the current framework. Moreover, in response to comments, the final rule takes a more incremental approach to reform that appropriately accounts for the differences among the categories of institutions that are subject to the CRA.

V. Section-by-Section Discussion

A. Qualifying Activities

Overview. Since 1977, community stakeholders, banks, and regulators have evaluated banks' CRA performance without an approved illustrative list of qualifying CRA activities. Without an illustrative list or detailed qualifying activities criteria, the activities that have received credit have varied from bank to bank, region to region, and time period over time period.[21] Thus, to avoid the uncertainty created by the lack of clarity regarding which activities will receive CRA credit, banks currently tend to gravitate to a few types of activities that have received consideration in the past because they are more confident those activities will receive credit in the future.[22]

The proposal included detailed qualifying activities criteria that clarified what type of activities would count for CRA credit and expanded the activities that would count to include additional activities that were consistent with the stated purpose of the CRA. The proposal also provided a process for confirming whether an activity is qualifying before commencement of the activity and included a publicly available non-exhaustive, illustrative list of examples of qualifying activities that meet or do not meet the criteria in the rule (CRA illustrative list).

These proposed changes addressed current impediments to engaging in CRA activities and would have provided banks with greater certainty and predictability regarding whether certain activities would qualify for CRA credit. The OCC received many comments on the proposed qualifying activities; the OCC's responses are set forth below.

Qualifying activities criteria and scope. In the proposal, the agency clarified the activities that would qualify for CRA credit by defining a qualifying activity as an activity that helps meet the credit needs of a bank's entire community, including LMI individuals and communities and setting forth clearly defined qualifying activities criteria, which identified the types of activities that would meet the credit needs of banks' communities. The proposed criteria included activities that currently qualify for CRA consideration. In this regard, the agency incorporated some of the guidance on activities that currently receive credit under the *Interagency Questions and Answers Regarding Community Reinvestment (Interagency Q&As),*[23] such as affordable housing for middle-income individuals and families in high-cost areas, into the qualifying activities criteria. The proposed criteria also expanded the activities that would count as qualifying activities to include other activities that meet the credit needs of economically disadvantaged

[20] 12 CFR 25.12(u); 195.12(u).

[21] Under this approach, banks often are uncertain about whether an activity will qualify for CRA consideration until their supervisory agency makes a determination in a CRA evaluation, which often happens years after the bank engaged in the activity in question.

[22] For example, while stakeholders expressed support for banks engaging in activities outside of their assessment areas, banks are inhibited from doing so today due to the limitations on where qualifying activities can count outside of assessment areas and the uncertainty of not knowing if they have done enough in their assessment areas for their outside activities to count in circumstances where banks may count qualifying activities outside of their assessment areas. Commenters to the CRA ANPR stated that the ambiguity over what types of activities qualify for CRA consideration under the current framework discourages certain types of CRA activity in LMI census tracts and other identified areas of need. *See* 85 FR 1204, 1207 (Jan. 9, 2020).

[23] *See* 81 FR 48505 (July 25, 2016).

individuals and entities, LMI census tracts, and other identified areas of need in banks' communities. This expansion recognized that there are additional activities that meet the credit needs of these populations and areas that are consistent with the statutory purpose of the CRA but that do not currently qualify for CRA credit. The proposed changes generally expanded, not reduced, the type of activities that would have qualified for CRA credit but remained consistent with the statutory purpose of encouraging banks to serve their entire communities, including LMI neighborhoods.

The OCC received a variety of comments on the proposed qualifying activities criteria and related definitions. Some commenters supported the expansion and clarification of the activities that would qualify for CRA credit. Others argued that the proposal contravened the text and purpose of the CRA by not focusing appropriately on LMI communities and individuals, and they expressed concern that, if adopted, the proposal would negatively impact, and reduce investment in or benefits to, these areas and populations. Commenters expressed their opinion that the proposal would incentivize banks to focus on higher dollar projects rather than smaller, more targeted loans, investments, and grants. Some community group and industry commenters suggested that banks should continue to receive credit for more general areas of economic development, workforce development, and job creation activities. At least a few community group and industry commenters noted that the exclusion of economic development activities would directly harm financing intermediaries. A few commenters expressed concern that the proposal would negatively impact funds such as the University Growth Fund. The agency carefully considered these comments and concluded that some changes should be made to the proposed qualifying activities criteria to emphasize LMI activities in appropriate circumstances and to correct the inadvertent exclusion of certain activities that qualify under the current framework. The OCC's responses to commenters' concerns and revisions to the qualifying activities criteria and related definitions are discussed below.

CD investments. The proposal replaced the term qualified investment [24] in the current regulation with the term CD investment.[25] A few industry commenters sought clarification as to whether the proposal intended to expand the range of investments eligible for CRA credit to encompass investments that would not be considered public welfare investments under the OCC's regulations, 12 CFR part 24 (part 24).[26] Commenters also asked whether part 24 would be amended by replacing the current cross-reference to qualified investment with a reference to CD investment. The agency is clarifying that the purpose of the proposed change from qualified investment to CD investment was to use consistent terminology for loans, investments, and services with a CD purpose. In this regard, the agency is also clarifying that activities that currently receive CRA consideration as qualified investments would receive CRA consideration as CD investments. The OCC, as part of its ongoing regulatory activities, strives to ensure that nomenclature is up-to-date and consistent across its regulations. The OCC anticipates that it will consider and make any needed adjustments to part 24. The OCC is adopting the CD investment definition with minor clarifying changes to make clear that monetary donations and in-kind donations are two separate types of investments and is separately defining monetary donation and in-kind donation.

The agency is also clarifying that, as proposed, the criteria for qualifying activities encompasses activities that currently receive CRA consideration, as well as additional activities that meet the credit needs of economically disadvantaged individuals and entities and LMI census tracts and other identified areas of need in banks' communities, while maintaining an appropriate focus on LMI neighborhoods. Under the final rule, CD investments will include activities that meet the new qualifying activities criteria.

A commenter noted that the proposal was silent on the treatment of equity equivalent investments and requested that these investments be included in the qualifying activities criteria. The commenter noted that these types of investments are described in the *Interagency Q&As,* which explain how they are considered under the lending test, investment test, or both.[27] Equity equivalent investments that meet the definition of CD investment and one of the qualifying activities criteria will receive credit under the final rule. Moreover, all CD investments are eligible for a multiplier. Thus, even though the final rule does not provide the same formula for determining the consideration provided for equity equivalent investments as described in the *Interagency Q&As,* the final rule nonetheless recognizes the value that these activities contribute to communities.

Consumer loans. The NPR would have defined consumer loans with reference to the Call Report,[28] and these loans would have been included in all CRA evaluations as retail loans. Specifically, the proposal defined consumer loan as a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 6, Loans to individuals for household, family, and other personal expenditures.[29]

The agency received several comments on the definition of consumer loans and their inclusion in CRA evaluations. Many of these commenters expressed concern with the inclusion of consumer lending activities because of the burden associated with collecting

[24] The current CRA regulations define a qualified investment as a lawful investment, deposit, membership share, or grant that has as its primary purpose community development. 12 CFR 25.12(t); 195.12(t).

[25] The NPR defined a CD investment as a lawful investment, membership share, deposit, legally-binding commitment to invest that is reported on the Call Report, Schedule RC–L, or monetary or in-kind donation that meets the community development qualifying activities criteria.

[26] Under current 12 CFR 24.3, a public welfare investment is one that (1) primarily benefits LMI individuals, LMI areas, or other areas targeted by a governmental entity for redevelopment or (2) would receive consideration under the CRA regulations as a qualified investment.

[27] *See Interagency Q&As* §§ __.22(d)—1 and __.23(b)—1, 81 FR at 48540.

[28] Call Report means the Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161.

[29] As defined in the proposal, consumer loans would have included: (1) Credit card, which is an extension of credit to an individual for household, family, and other personal expenditures arising from credit cards; (2) other revolving credit plan, which is an extension of credit to an individual for household, family, and other personal expenditures arising from prearranged overdraft plans and other revolving credit plans not accessed by credit cards; (3) automobile loan, which is a consumer loan extended for the purpose of purchasing new and used passenger cars and other vehicles, such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use; and (4) other consumer loan, which is any other loan to an individual for household, family, and other personal expenditures (other than those that meet the definition of a loan secured by real estate and other than those for purchasing or carrying securities), including low-cost education loans, which is any private education loan, as defined in § 140(a)(8) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an institution of higher education, as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in § 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

data for consumer lending, particularly for activities that are currently on a bank's balance sheet. Other commenters expressed concern that the high dollar volume of certain consumer lending, such as credit card lending, may mean that banks engaged in those activities have little incentive to engage in other types of CRA activities.

A few community groups and individuals expressed concern about including consumer lending in CRA evaluations because of the potential negative impact on borrowers if those products were not offered with affordable rates and terms. These commenters offered a variety of suggestions for addressing their concerns, including limiting CRA credit for consumer loans to those that are safe and sound and offered at reasonable rates and with terms that are not detrimental to LMI individuals. Commenters suggested several ways the agency could limit the type of consumer loans that receive CRA credit under both the CRA evaluation measure and the retail lending distribution tests. A few industry commenters suggested that consideration of consumer lending should be optional unless it involves a substantial majority of the bank's lending, as under the current framework.[30]

In contrast, several commenters supported providing credit for consumer loans. For example, community groups noted that smaller-dollar lending at low rates is scarce and highly needed. Two industry commenters recommended that all consumer lending in LMI census tracts receive CRA credit.

The agency generally agrees that consumer lending should be a component of CRA evaluations because consumer loan products can be an important means for LMI individuals to gain access to credit. Further, many banks are exiting the home mortgage lending market and instead engaging in other types of lending activity, including consumer lending. The agency, however, is cognizant of the challenges to capturing the information needed to evaluate credit card lending and believes that, given the nature of the lending and the impact it has on LMI individuals and communities, it may not be appropriate for the CRA to be used to incentivize banks' credit card lending. The agency also recognizes that certain lending activities that meet the proposed definition of consumer loan may not provide adequate benefit to LMI individuals, such as certain overdraft products. The agency emphasizes that its expectation is that all CRA activities, including consumer lending, will be conducted in a safe and sound manner and consistent with the OCC's relevant guidance.[31]

Considering these factors, the final rule includes consumer loans provided to LMI individuals and in Indian country or other tribal or native lands in the qualifying activities criteria but removes credit cards and overdraft products from the definition of consumer loan to reduce the burden associated with information gathering and to ensure that banks have an incentive to engage in a variety of CRA activities that benefit LMI individuals. The agency did not further restrict the categories of consumer loans to ensure that CRA credit will be given for providing consumers with access to a variety of consumer lending products and is otherwise adopting the consumer loan definition as proposed. The agency expects that, as part of its ongoing administration of the regulation, it will provide guidance needed on various aspects of the rule, including on the documentation needed to demonstrate that a consumer loan qualifies for CRA credit. Further, as discussed below, the agency will consider the qualitative aspects of qualifying activities through performance context, as well as evidence of discriminatory or other illegal credit practices.

Home mortgage loans. The agency's objective in reforming CRA is to increase transparency and objectivity in all aspects of the CRA to incentivize banks to provide more CRA activities to those populations and communities that banks serve, including to LMI individuals or families and areas. To achieve these objectives, the proposal defined home mortgage loans with reference to the Call Report[32] but generally limited CRA credit to home mortgage loans made to LMI individuals and families to give proper emphasis to LMI lending activities. Specifically, the proposed qualifying activities criteria included home mortgage loans to LMI individuals and families and those provided in Indian country.[33]

Some commenters expressed concern that the proposal would eliminate home mortgage lending to middle- and upper-income individuals and families in LMI census tracts as a qualifying retail activity.[34] Commenters also stated that the issue of gentrification associated with giving CRA consideration for home mortgage loans to middle- and upper-income individuals and families is mostly confined to large coastal metropolitan areas, and the proposal would prolong economic distress in LMI communities in these areas.

At least a few community groups and individual commenters stated that excluding CRA credit for certain home lending in LMI census tracts would create negative externalities because of the limited information about borrowers and neighborhoods, and depressed housing markets in LMI tracts would make small business lending more difficult. Although the OCC is adopting the qualifying criteria related to home mortgage loans as proposed, as discussed below, the agency agrees that it is important that banks lend in LMI census tracts and have added a geographic distribution test for home mortgage loans.

Small loans to businesses and small loans to farms retail lending. In the NPR, the agencies proposed increasing the small loan to a business and the small loan to a farm loan size thresholds to loans of $2 million or less. The agencies also proposed increasing the business and farm revenue size thresholds that receive positive consideration under CRA to businesses and farms with gross annual revenues of $2 million or less.[35] These proposed increases were based generally on inflation since the thresholds were instituted 25 years ago, rounded up to the next million. The agencies also proposed the same loan size thresholds related to small loans to farms and small

[30] A commenter also stated that the agency should define substantial majority in the current framework.

[31] *See e.g.,* OCC Bulletin 2018–14, *Installment Lending: Core Lending Principles for Short-Term, Small-Dollar Installment Lending* (May 23, 2018).

[32] The final rule continues to define home mortgage loans by reference to the Call Report. In response to a commenter's concern, the agency is clarifying that construction loans for 1–4 family residential properties to builders and consumers are home mortgage loans for CRA purposes if they are reported on Item 1.a.(1) of Schedule RC–C of the Call Report.

[33] To focus on LMI home mortgage lending, the proposal did not apply the retail lending geographic distribution test to home mortgage loans.

[34] These commenters argued that the change would: (1) Thwart the CRA objective of economic integration; (2) ignore research on the educational and other benefits to LMI individuals and families of living and working in integrated communities; (3) hasten displacement by making it more difficult for LMI borrowers to receive loans in gentrifying areas; (4) cause banks to focus on loans to LMI households in non-LMI tracts; and (5) be inconsistent with the CRA statute's mandate for banks to serve their *entire* community.

[35] The proposal defined businesses and farms that meet the revenue thresholds as small businesses and small farms. For the reasons described below, these terms were replaced in the final rule with the terms CRA-eligible business and CRA-eligible farm.

loans to businesses to provide consistency in treatment.

The agency received conflicting comments from community groups, industry, and government stakeholders on the increases to the loan size and revenue size thresholds. Certain commenters supported the increases, with some arguing that the thresholds should be increased even further and indexed to inflation going forward. In contrast, other commenters opposed the increases, with several industry, community, and individual commenters stating that it was unclear why the agencies had selected $2 million for the thresholds. The commenters generally expressed the concern that increases to these thresholds could incentivize banks to make larger loans to larger businesses. Certain commenters argued that the existing loan size and revenue thresholds were too large. A community group also asserted that the proposed increases to the loan size and revenue thresholds may diminish the prospects for black-owned businesses to access capital in comparison to white-owned businesses.

In response to the proposed loan size thresholds, some commenters supported the proposal and stated that increasing loan sizes would divert less financing from the smallest businesses and farms than increasing the revenue thresholds and noted that higher loan amounts may be needed in more expensive areas. Commenters suggested that the current small loan to a business threshold of $1 million could be updated to $1.6 million to account for inflation according to the U.S. Government Accountability Office. However, commenters stated that increases beyond that amount are not supported by data because neither the overall average nor the average for the highest quartile of loans to businesses with revenues over $1 million approached the $1 million loan limit. To address the concerns about disincentivizing smaller loans, one commenter suggested that banks should receive double credit for the smallest small business loans.

After considering these comments, the final rule includes a smaller increase to the loan size thresholds of $1.6 million instead of the proposed $2 million, which more closely reflects the increase resulting from inflation. Based on the agency's analysis, this threshold accounts for inflation since the $1 million small loan to a business size threshold was introduced in 1995, rounded up to the next $100,000 increment instead of the next million as was proposed. This loan size threshold also standardizes the threshold applicable to small loans to businesses and small loans to farms.

In response to the proposed increase to the revenue thresholds for the size of a small business or small farm, some commenters expressed concern that the increased thresholds would divert lending away from the smallest businesses with the greatest credit needs, which they stated are the primary engines of economic growth and job creation.[36] Another commenter, who asserted the existing thresholds were too expansive, suggested a two-prong test: $1 million or less in gross annual revenues and loans must be targeted to small businesses owned by underserved borrowers or small businesses that operate primarily in underserved communities. Similarly, a community group stated that loans to large corporate agricultural operations should be excluded and asserted that more information is necessary to understand the impact of the increased revenue size thresholds. As opposed to a revenue limit, a community group recommended that the OCC consider the profile of the business borrowing the funds to incentivize banks to serve business owners from groups that have been, and continue to be, excluded from access to credit from banks.

Other commenters supported increasing the revenue size thresholds. The U.S. Small Business Administration (SBA) stated that qualifying retail loans under the CRA should not be limited to businesses with $2 million or less in annual revenue and in amounts of $2 million or less. Specifically, the SBA stated that the agency could not define small business in a way that differed from the SBA's standards without obtaining its approval. An industry commenter supported using the SBA standards for the definition of small business and small farm. Another industry commenter suggested that, in addition to a $2 million revenue threshold, there should be a 20-employee limit.

After considering these comments, the agency is adopting a smaller increase to the revenue thresholds of $1.6 million instead of the proposed $2 million, which reflects the increase resulting from inflation rounded to the next hundred thousand. These increased revenue size thresholds are intended to encourage economic development and job creation and recognize that the thresholds have not been increased to account for inflation since they were instituted in 1995.

In response to the comments, the agency is also revising the terms used to define the type of businesses and farms banks can receive CRA credit for financing. As such, the final rule replaces the terms small business and small farm with the terms CRA-eligible business and CRA-eligible farm.

The NPR also proposed annual adjustments to the loan size and revenue size thresholds. Some commenters expressed concern that annual adjustments would be too frequent and may increase the risk of error. Some industry commenters suggested that the adjustments should be made every 5 or 10 years. In contrast, several industry commenters expressed support for adjustments to the loan size and revenue size thresholds, including one that supported annual adjustments. Regarding the form of adjustments, commenters suggested simple incremental adjustments, not percentage adjustments, to reduce the burden with regard to data collection and data integrity requirements. The final rule requires that the $1.6 million thresholds be adjusted for inflation once every five years to balance concerns regarding the burden associated with changes to the thresholds with the OCC's interest in ensuring that the thresholds keep pace with inflation.

The OCC also received comments on other aspects of the small loan to a business definition. Community groups recommended that credit cards and subprime products not qualify for CRA credit under the retail lending distribution test applicable to small loans to businesses. The final rule defines small loans to businesses by reference to the Call Report to reduce complexity and to be consistent with the current regulation. However, the agency will consider qualitative aspects of qualifying activities, such as the ones referenced by commenters, as part of performance context.

At least a few industry commenters also urged the agencies to include loans to businesses secured by real estate in the definition of a small loan to a business. Under the current framework these loans are treated as home mortgage loans. In the OCC's view, this remains an appropriate treatment of these loans because it is consistent with how these loans are categorized on the Call Report,[37] and the agency is not revising the treatment of these loans as

[36] For example, commenters argued that the change is unsupported by research and noted that 76 percent of firms have receipts under $100,000, and another 19 percent have receipts between $100,000 and $999,999.

[37] Consistent with the proposal, home mortgage loans, small loans to businesses, small loans to farms, and consumer loans (*i.e.,* retail loans) are defined with reference to the Call Report.

part of the final rulemaking. Some of these commenters also requested that the agencies clarify whether and when banks could classify small loans to businesses and small loans to farms as CD loans, because how these loans are classified would affect banks' ability to meet the CD minimum and the retail lending distribution tests, discussed below. The agency is clarifying that loans that meet the criteria for both: (1) CD loans; and (2) small loans to businesses or small loans to farms could receive credit in the bank's CRA evaluation measure or assessment-area CRA evaluation measures as either: (1) CD loans; or (2) retail small loans to businesses or farms—but not both (*i.e.,* the dollar value of these loans can only be counted once). If a bank elects, the quantified value of these loans could count towards satisfying the CD minimum. Even if a bank elects to consider a small loan to a business or small loan to a farm as a CD loan for purposes of the CRA evaluation measures and CD minimums, the bank must include all loans that meet the retail loan criteria in the retail lending distribution tests. Further, under the final rule, commenters' concerns with the more qualitative aspects of CRA-eligible business and CRA-eligible farm-related activities, such as what type of businesses benefit and whether banks are making smaller loans, will be addressed through the application of performance context and, in certain circumstances, through the use of multipliers, discussed below.

Other than the changes described above, the agency is adopting the CRA-eligible business, CRA-eligible farm, small loan to a farm, and small loan to a business definition as proposed. The agency has implemented conforming edits throughout the rule to reflect the changes discussed above in this section.

Commitments to lend. The NPR defined a CD loan as a loan, line of credit, or contingent commitment to lend that meets the CD qualifying activities criteria.[38] The proposal defined contingent commitments to lend as legally binding commitments to extend credit in instances where another bank initially funded, or committed to fund, a project but cannot, for financial or legal reasons, advance unanticipated additional funds necessary to complete the project.

The agency received comments asserting that, under the proposal, banks would not receive sufficient CRA credit for certain legally binding commitments to lend, such as revolving credit lines and standby letters of credit due to how these types of commitments to lend would be quantified. These commenters stated that banks should receive credit for the value of standby letters of credit and other legally binding commitments to lend because: (1) Banks are legally bound to the commitments; (2) the value of the line of credit reflects the consumer's access to credit; (3) banks must hold capital against noncancelable lines; and (4) some projects mandate having such letters of credit.

The agency agrees that certain legally binding commitments to lend, such as standby letters of credit, are important to facilitating beneficial CRA projects across the United States. In particular, legally binding commitments to lend that provide credit enhancements are necessary to get many affordable housing projects off the ground. However, general lines of credit that are not drawn, in the OCC's view, do not provide the same value as legally binding commitments to lend, such as standby letters of credit. To address the commenters' concern, the final rule provides that legally binding commitments to lend, such as standby letters of credit that can provide needed credit enhancements for qualifying activities to commence or continue, are quantified based on the dollar value of the commitment. Other general commitments to lend are quantified, as proposed, based on the on-balance-sheet funded portion of the credit line because that value most accurately reflects the bank's CRA commitment. The agency has revised the quantification section to reflect this policy decision. The final rule also redefines the type of commitments to lend that qualify as CD activities to focus on the legally binding commitments to lend described above.

Affordable housing. The proposal would have provided credit for activities that finance or support affordable housing that partially or primarily benefit middle-income individuals or families in high-cost areas as demonstrated by: (1) A governmental set-aside requirement; or (2) being undertaken in conjunction with a government affordable housing program for middle-income individuals or families in high-cost areas. Some commenters supported these components of the affordable housing criterion, but others opposed them, arguing that LMI individuals and families face the greatest housing burdens, and the criteria could divert resources from them. Commenters suggested expanding the middle-income criteria to include owner-occupied as well as rental housing.

Upon consideration of all the comments on this topic, the agency agrees with commenters that suggested that providing CRA credit for affordable housing should be focused on LMI individuals and families. Therefore, the final rule does not include the proposed middle-income rental housing in high-cost areas components of the affordable housing criterion or the definition of high-cost area.

The proposal also clarified that affordable housing encompasses naturally occurring affordable housing (*e.g.,* unsubsidized rental housing with rents that are affordable to LMI individuals and families). To qualify under this aspect of the affordable housing criterion, the housing must be likely to partially or primarily benefit individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income. Several commenters expressed concern that the criterion did not require that the housing be occupied by LMI individuals or families and suggested that the criterion be revised to include that requirement.

While the agency understands commenters' desire to ensure that LMI individuals or families occupy the affordable units that banks receive credit for under the CRA, in the OCC's view, the proposed criterion is appropriate given the importance of maintaining the nation's affordable housing stock.[39] Adding a requirement that banks ensure that LMI individuals or families are actually occupying the unsubsidized affordable rental units would be too burdensome for banks, if not infeasible, particularly for units with long-term tenants. Such a requirement would create a competitive disadvantage that would further push banks out of LMI housing finance. Specifically, if banks require borrowers to ascertain the income level of current and prospective tenants before financing the maintenance, rehabilitation, or construction of unsubsidized affordable housing at the outset or on an on-going basis, borrowers may choose to forgo bank financing and seek non-bank financing to avoid the increased burdens. Further, banks may decide that the additional burdens do not justify providing loans to borrowers for unsubsidized affordable housing. Thus,

[38] A line of credit also meets the definition of retail loan.

[39] *See Preserving Affordable Rental Housing: A Snapshot of Growing Needs, Current Threats, and Innovative Solutions,* Office of Policy Development & Research, U.S. Department of Housing and Urban Development (Summer 2013), available at *https://www.huduser.gov/portal/periodicals/em/summer13/highlight1.html.*

the requirements suggested by commenters, while well intentioned, could have the long-term consequence of diminishing affordable housing options for LMI individuals and families. This would be contrary to the objective of the agency's reform efforts regarding the CRA. Therefore, the agency is adopting this component of the affordable housing criterion as proposed with a clarifying revision.[40]

Community groups recommended that only acquisitions or re-financings by non-profits and local governments that commit to improve or maintain the housing stock at a level consistent with the local housing code should be CRA eligible. As noted below, the agency will consider qualitative aspects of a bank's qualifying activities through performance context, including whether activities that finance affordable housing are consistent with local housing codes. Two commenters expressed their belief that examiners have applied the phrase express, bona fide intent, purpose, or mandate inconsistently under the current framework, resulting in costly and burdensome ownership structures for affordable housing. As discussed below, the final rule includes an illustrative list of qualifying activities and a process for confirming that a particular activity meets the qualifying activities criteria, which will help to improve consistent treatment of qualifying activities under the final rule.

Community support services. The proposal defined community support services as activities, such as child care, education, health services, and housing services, that partially or primarily serve or assist LMI individuals or families. A few community groups and industry commenters noted the importance of workforce development activities for LMI individuals and stated that such activities should receive CRA credit. It was the OCC's purpose that the proposed qualifying activities criteria would include workforce development and job training programs for LMI individuals. Although the examples provided in the community support services definition were, and are, not exhaustive, the final rule revises the definition of community support services to expressly include workforce development and job training programs to make clear that banks will receive credit for financing or supporting those types of programs for LMI individuals. Otherwise, the agency adopts the community support services definition as proposed.

Economic development. Under the current regulatory framework, CD activities include those that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Development Center (SBDC)[41] or Small Business Investment Company (SBIC) programs or have gross annual revenues of $1 million or less. The *Interagency Q&As* explain what type of activities are considered to promote economic development.[42] Certain aspects of this guidance are not well understood, particularly job creation, retention, and improvement, providing little incentive for banks to engage in activities that could help their communities. The proposal did not retain the term economic development and instead sought to identify activities that would qualify under the current framework as economic development activities through more detailed and objective qualifying activities criteria. For example, one of the criteria in the proposal that was designed to capture economic development activities was the criterion regarding technical assistance and supportive services, such as shared space, technology, or administrative assistance for businesses or farms that meet the size eligibility standards of SBDC and SBIC programs.

Commenters expressed concern that certain activities that qualify under the current framework would no longer have qualified under the proposal. Commenters suggested that to ensure these activities receive CRA credit the agency should eliminate the reference to technical assistance and supportive services in the qualifying activities criteria or revise the reference so these activities are examples of, not required, uses of loan funds. Commenters also requested clarification on what activities satisfy the technical assistance and supportive services criteria.

Community group commenters stated that loans and investments that support projects, programs, or organizations with a mission of community or economic development or those defined as community/economic development by federal, state, local, or tribal governments should be presumed to qualify for CRA credit. One industry commenter suggested that, by granting CRA credit for investing in SBICs and other programs administered by government agencies—but not in privately funded programs—the agencies are allowing the SBA and other agencies to be the exclusive gatekeepers of CRA credit.

Eliminating CRA credit for activities that currently qualify as economic development was not the OCC's purpose. To address commenters' concerns, the final rule revises the qualifying activities criteria by adding an economic development criterion. This new criterion is a consolidation of three proposed criteria with two additional components that capture activities permitted under the current framework but inadvertently excluded in the proposal, including activities that promote job creation or retention for LMI individuals.[43] Under the final rule, CD activities include those that finance or support economic development, which means activities that provide financing for or support: (1) Federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily serve small businesses or small farms as those terms are defined in the programs, projects, or initiatives; (2) job creation or job retention partially or primarily for LMI individuals; (3) retaining existing, or attracting new, businesses, farms, or residents to LMI census tracts, underserved areas, distressed areas, designated disaster areas consistent with a disaster recovery plan, or Indian country and other tribal and native lands; (4) a Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a SBIC, as described in 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture (USDA) Rural Business Investment Company, as defined in 7

[40] In addition to the changes described above, the OCC made two clarifying changes to the affordable housing criterion: (1) The OCC replaced the term ''benefit'' with the more specific phrase ''inhabited by'' in the affordable housing criterion to clarify that affordable housing must be likely to or be inhabited by LMI individuals or families and made other technical conforming revisions; and (2) the OCC clarified that affordable housing activities include owner-occupied housing purchased, refinanced, or improved by or *on behalf of* LMI individuals or families, except for home mortgage loans provided directly to individuals or families.

[41] The preambles to the proposed and final rules abbreviate SBA Certified Development Companies as SBDCs. One commenter suggested that the references to these entities in the rule and in the *Interagency Q&As* should use the abbreviation CDC for Certified Development Companies instead. The agency notes that, in the CRA context, CDC typically refers to community development corporation and the use of SBDC is intended to avoid confusion.

[42] *See Interagency Q&As* § ____.12(g)(3)—1, 81 FR at 48526.

[43] A few commenters offered suggestions on how to track job creation. Suggestions included using Participant Individual Record Layout data collected by the U.S. Departments of Labor and Education and using job creation statistics from the Bureau of Labor Statistics. The OCC plans to consider these comments as it develops guidance for implementing the qualifying activities criteria.

CFR 4290.50; or (5) technical assistance and supportive services, such as shared space, technology, or administrative assistance for businesses or farms that meet the size-eligibility standards of the SBIC, as described in 13 CFR part 107.

Additionally, as discussed above, the criteria in the proposal related to technical assistance and supportive services incorporated the size eligibility standards for the SBDC and SBIC programs. This standard was one of two size standards provided in the *Interagency Q&As* related to economic development.[44] The proposal did not include the other size standard in the *Interagency Q&As*—businesses or farms with gross annual revenues of $1 million or less. Some commenters recommended that the OCC revise the criterion to include the size standard of gross annual revenues of $1 million or less in place of the one in the proposal. The OCC reviewed the SBA regulations and determined that the SBIC program size standards encompass both businesses and farms with gross annual revenues of $1 million or less and those that meet the size-eligibility standards of the SBDC program. Therefore, the agency is not implementing the commenters' suggestions. Businesses and farms that meet commenters' suggested size eligibility standards also meet the size eligibility standards of the SBIC program.[45] The agency is also revising the proposed size standard in the technical assistance and supportive services economic development criterion component by removing the reference to the SBDC program to eliminate that additional redundancy.

A few industry commenters expressed concern about overlapping and inconsistent definitions and qualifications for activities involving businesses and farms in the retail lending and CD criteria in the proposal. The OCC acknowledges that loans to businesses or farms of varying sizes receive credit under different qualifying activities criteria. These varying business and farm size thresholds were included in the proposal to ensure that certain activities that already qualified for CRA credit continue to qualify under the revised regulations. The agency will work to ensure that qualifying activities criteria and related definitions are consistent to the maximum extent possible in its administration of the regulation going forward.

Essential community facilities. The NPR included a criterion for essential community facilities that partially or primarily benefit LMI individuals or families, LMI census tracts, or other identified areas of need. At least a few community groups and one industry commenter suggested that essential community facilities must benefit or serve LMI communities. A few community group commenters argued that certain facilities that do not actually serve LMI communities would meet this definition. Commenters asserted that it was unclear whether CRA credit would be provided for facilities that only tangentially benefit LMI individuals or families, LMI census tracts, and other identified communities of need. These commenters also noted their belief that banks are likely to finance these activities without a CRA incentive. One industry commenter argued that healthcare facilities should receive CRA credit for the entire investment regardless of who benefits.

The comments provided on the proposed essential community facilities criterion and definition appear to reflect a misunderstanding of the proposal. As proposed, essential community facilities projects would only have received CRA credit if they partially or primarily benefit or serve LMI individuals or families, LMI census tracts, or other identified areas of need.[46] The proposal provided that banks would receive full credit for activities that primarily benefit or serve these communities and pro-rata credit for activities that partially benefit or serve these communities. As discussed below, the agency will accept reasonable methods for calculating the benefit to LMI populations and other identified communities of need. Otherwise, the OCC is adopting the essential community facilities definition and criterion as proposed.

Essential infrastructure. The agency proposed including a CD criterion for essential infrastructure. The proposal did not limit CRA credit for essential infrastructure projects to those that partially or primarily benefitted or served LMI individuals or families, LMI areas, or other identified areas of need, provided these populations and communities received some benefit from the projects. Several community groups expressed concern that the essential infrastructure criterion was too broad and would divert resources away from other projects that benefit LMI communities that are most in need of resources and may even harm these communities.[47] At least a few community groups and one industry commenter suggested that essential infrastructure projects should only receive CRA credit if the bank documents that the infrastructure benefits LMI communities. A few community group commenters recommended that CRA credit should only be provided if the project primarily serves LMI individuals and communities, unless the activity is in a rural area. A few community groups also suggested restricting credit for essential infrastructure projects to circumstances where access to funding is limited. Another community group suggested that there should be protections for LMI communities that face displacement due to redevelopment projects.

The agency agrees that CRA activity should focus on LMI individuals and census tracts and other identified areas of need. In response to these comments, the OCC revised this criterion to require that essential infrastructure activities must partially or primarily serve: (1) LMI individuals or families; or (2) LMI census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands. This revision acknowledges the importance of these types of projects to communities in helping to attract new or retain existing businesses and residents. As discussed below, the agency will consider qualitative aspects of a bank's CRA activities as part of

[44] *See Interagency Q&As* § ___.12(g)(3)—1, 81 FR at 48526.

[45] The $1 million or less gross annual revenue size standard suggested by commenters would also mean that certain activities that finance businesses with revenues in excess of $1 million but that meet the SBIC size eligibility standards would no longer meet the qualifying activities criteria.

[46] For the sake of clarity, the agency removed the word benefit from the criterion to focus on these facilities serving their communities.

[47] The agencies also received comments from community groups and industry commenters on the method of financing essential infrastructure, in particular, municipal bonds and tax increment financing bonds (TIFs). A number of commenters suggested that municipal bonds, or municipal bonds that only partially benefit LMI individuals, should not be included as qualifying activities, while other commenters supported fully valuing municipal bonds. A few community group commenters suggested that the financing of TIFs should not receive CRA credit or only receive credit to the extent TIF expenditures directly serve LMI households and census tracts, while one industry commenter suggested that TIFs used by municipalities should qualify for CRA credit. Because municipal bonds and TIFs are common methods for financing essential infrastructure, the OCC is not making any changes in the final rule in response to these comments but does note that, as in the proposal, municipal bonds are excluded from the final rule's multiplier provisions.

performance context, including how responsive the essential infrastructure projects are to the communities they serve.

The OCC also received comments on the definition of essential infrastructure. Suggestions for revisions to the definition included: (1) Adding renewable energy production and distribution; (2) adding abatement of certain environmental hazards; (3) adding activities that promote climate resilience; and (4) clarifying whether any public infrastructure project receives credit. The agency does not believe changing the definition of essential infrastructure is necessary because, depending on the facts and circumstances, the suggested types of projects may already receive credit under the proposed qualifying activities criteria. As explained in the preamble to the proposal, depending on the facts and circumstances, activities that finance or support affordable housing, essential community facilities, or essential infrastructure may include: (1) Renewable energy, energy-efficiency, or water conservation equipment or projects associated with affordable housing, essential community facilities, or essential infrastructure; or (2) the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, lead pipes (such as those used in antiquated water supply systems), asbestos, mold, or radon that is present in the housing, facilities, or site where the housing or facilities are located. In addition, as with essential community facilities, the agency is clarifying that all infrastructure projects that meet the definition and the criterion are essential infrastructure for purposes of the CRA. As such, the agency is adopting the essential infrastructure definition as proposed.

Family farms. As proposed, family farm was defined using the definition from the Farm Service Agency of the USDA.[48] Some commenters supported the inclusion of family-farm related activities in the proposal. Many commenters stated, however, that the proposal used a revenue threshold of $10 million for family farms which, they argued, is unsupported by research or analysis. These comments appear to be based on a misunderstanding. In providing an example of an activity on the CRA illustrative list, the agency used a family farm with gross annual revenues of $10 million. This was only an example; the Farm Service Agency of the USDA's definition of family farm is not based on a revenue threshold.

An individual commenter also recommended an alternative definition for family farm based on the definition of farm in the Agriculture Improvement Act of 2018.[49] Two industry commenters also requested clarification on the types of farming entities that are considered family farms.[50] The final rule continues to rely on the expertise of the USDA in defining family farms and retains the cross-reference to the Farm Service Agency of the USDA's definition of family farm. Under the final rule, banks and interested parties may request confirmation that activities involving specific farms meet the family farm definition and qualifying activities criterion.

The proposal provided credit for CD activities that provide financing for or support a family farm's: (1) Purchase or lease of farm land, equipment, and other farm-related inputs; (2) receipt of technical assistance and supportive services, such as shared space, technology, or administrative assistance through an intermediary; or (3) sale and trade of family farm products.[51] The agency intended for the family farm qualifying activities criterion to provide CRA credit for activities that finance or support family farm production and the sale and trade of a family farm's own products. The proposal could also have provided CRA credit for activities that finance or support activities other than production, such as a family farm with capacity for buying and warehousing crops produced by others and subsequently selling and trading them on the open market. While these are beneficial activities and should be encouraged, they go beyond the needs of the family farm to finance its own production and, in the OCC's judgment, do not fit within the scope of the CRA. To clarify that these activities will not qualify, the final rule limits the qualifying criteria to activities that finance or support a family farm's own production, including the sale and trade, of its own products. Otherwise, the agency is adopting the family farm definition and criterion as proposed.

Federal, state, local, or tribal government programs, projects, and initiatives. The proposed qualifying activities criteria included a CD criterion for activities that finance or otherwise support federal, state, local, or tribal programs, projects, or initiatives that benefit or serve LMI individuals or families, small businesses or small farms, or LMI census tracts or other identified areas of need. Commenters suggested that the agencies should clarify and more clearly define what is included in government programs, projects, or initiatives, including by clarifying whether the criteria are inclusive of local, state, and federal revitalization undertaken via the establishment of specified geographies (*e.g.,* Enterprise Zones, Historic Underutilized Business Zones). They also suggested the criteria be more precise due to the potential for contentious projects. Industry commenters suggested that the criterion should be adjusted to allow for programs to benefit areas of identified need so that state and local governments can determine which activities should qualify.

The agency carefully considered the commenters' concerns. The agency continues to believe that, in many circumstances, communities are in the best position to identify their needs and design projects, programs, and initiatives that help to address those needs. This criterion is meant to provide the flexibility to encompass a variety of programs, projects, and initiatives that serve LMI individuals and families, LMI census tracts, and other identified areas of need. Nonetheless, the agency appreciates the need for clarity. Banks and interested parties that have questions about activities should reference the CRA illustrative list or utilize the qualifying activity confirmation process in the final rule. As such, other than consolidating the component of this criteria that involves financing or supporting small businesses or small farms with the other related activities under the new economic development criterion, the OCC is adopting these criteria as proposed, with a minor clarifying edit.[52]

Financial literacy. The NPR would have provided credit for all financial literacy and education or homebuyer counseling activities, regardless of the income level of the beneficiary of the

[48] *See* 7 CFR 761.2(b).

[49] Public Law 115–334, 132 Stat. 4490 (2018).

[50] A commenter also noted concerns with the biased nature of farm lending and alleged racial discrimination against African-American-owned farms. Lending disparities correlated with race or ethnicity are of concern to the agency, and the agency addresses lending discrimination-related concerns through the federal fair lending laws.

[51] One industry commenter recommended that the OCC include operating loans, such as crop and livestock loans, in the qualifying activities criteria. The proposal would have provided credit for these loans because they provide financing for farm-related inputs. These activities also will qualify under the final rule.

[52] As with other criterion, the final rule uses more specific terminology and removes the term benefit to clarify that these programs, projects, and initiatives must serve LMI individuals or families, LMI census tracts, or other identified areas of need.

activity.[53] Some commenters argued that these activities should only receive credit if they are targeted to LMI individuals or families for the framework to be consistent with the statutory purpose of the CRA. The agency disagrees with these comments, which are premised on the incorrect assumption that the CRA statute and regulations are intended to exclusively benefit LMI individuals and communities. The language in the CRA statute expressly contemplates that banks should be encouraged to meet the credit needs of their entire communities, including their LMI neighborhoods. Thus, while LMI-focused activities are important, the existing regulations give CRA consideration for farm and business lending, which these commenters have not challenged. Moreover, since 2005, the CRA regulations have provided consideration for activities that revitalize or stabilize distressed or underserved nonmetropolitan middle-income areas.[54]

Where appropriate, the OCC has placed particular emphasis on incentivizing increased activities targeted to LMI individuals, families, and census tracts. This includes limiting CRA consideration in the CRA evaluation measure to mortgages made to LMI individuals and families. The agency has, however, also sought to give credit for activities that do not exclusively benefit LMI individuals, families, and census tracts in circumstances where the OCC has determined that it is appropriate to ensure banks are serving their entire communities and where such activities are much needed (*i.e.,* other identified areas of need). The agency believes that providing financial literacy and education or homebuyer counseling to a broad audience, including but not limited to LMI communities, is consistent with both the language and the spirit of the CRA. The need for, and benefit of, financial literacy extends well beyond LMI individuals, families, and census tracts. Given these considerations, the agency is adopting the financial literacy criterion as proposed.

Indian country. The proposal would have defined Indian country by reference to 18 U.S.C. 1151 and provided credit for certain activities in Indian country. A few industry and community groups said that the statutory definition of Indian country was too narrow and would exclude lands that are typically thought of as Indian country. These commenters provided options for expanding the definition, such as including various Census Bureau statistical areas or by adding areas that would be covered by the Inspiring Nationally Vibrant Economies Sustaining Tribes Act of 2020 bill, which has been proposed and referred to the Senate Committee on Finance.[55] At least one community group requested that Hawaiian Home Lands, which are held in trust by the state of Hawaii, and State Designated Tribal Statistical Areas be considered but remain distinct from federal designations of Indian country. One commenter suggested that activities in census tracts adjacent to a reservation or within a number of miles from a reservation border qualify for CRA credit.

The agency agrees that the proposed definition should be expanded to cover additional areas typically thought of as Indian country or other tribal and native lands. As noted above, the final rule continues to define Indian country by reference to the definition in 18 U.S.C. 1151 but adds Census Bureau-designated Tribal Census Tracts, Oklahoma Tribal Statistical Areas, Tribal Designated Statistical Areas, American Indian Joint-Use Areas, and Alaska Native Village Statistical Areas. The final rule also includes other tribal and native lands as a new defined term, which includes Hawaiian Home Lands and State Designated Tribal Statistical Areas. Activities that qualify in Indian country will also qualify in other tribal and native lands. In the final rule, the OCC made conforming revisions to the qualifying activities criteria and the measure of a bank's branch distribution in the CRA evaluation measure.

Commenters also sought clarity on whether Indian country would include lands not in a reservation and no longer in a state of original allotment or include lands that were once within the boundaries of native nations even if they were not technically reservations or allotments. Areas that are not covered by the final rule's changes to the proposal are only part of Indian country if they meet the statutory definition of 18 U.S.C. 1151, which includes reservations, dependent Indian communities, and allotments. The agency notes that case law has interpreted the statute to cover informal reservations,[56] and the term dependent Indian communities specifically to cover ''a limited category of Indian lands that are neither reservations nor allotments, and that satisfy two requirements—first, they must have been set aside by the [f]ederal [g]overnment for the use of the Indians as Indian land; second, they must be under federal superintendence.'' [57]

One community group recommended that the agency provide credit for activities funded by the government or receiving tribal authorization or support. All retail loans in Indian country and other tribal and native lands qualify for CRA credit under the final rule. The CD criteria also include certain tribal government programs, projects, or initiatives and other activities related to Indian country and other tribal and native lands. As noted below, activities need not be in Indian country or other tribal and native lands to be a qualifying activity if they benefit or serve those areas. For activities whose qualifying status is ambiguous, the OCC encourages interested parties to seek confirmation as provided in the final rule. Another commenter suggested that government agency and tribal leaders be consulted regarding any expansion or inclusion of the CRA in their communities. The agency engaged in significant outreach prior to issuing the NPR and received feedback from many stakeholders that informed the proposal and the final rule, including those that would be affected by the inclusion of activities in Indian country and other tribal and native lands.

Opportunity zones. The proposal would have given credit for qualified opportunity funds that benefit LMI qualified opportunity zones. A few industry commenters expressed support for providing credit to investments in opportunity zones. Some community groups relayed concerns about such provision of credit because these investments could finance projects that do not benefit LMI individuals or communities. These commenters provided examples of such projects, including luxury condominiums. A few

[53] Two community groups stated that, for several reasons, non-profits are better suited to deliver financial education services. They suggested that CRA credit be awarded for banks' support of and investment in non-profits' financial literacy and education programs rather than encouraging banks to provide the services directly. Under the proposal and the final rule, banks may receive CRA credit for financial literacy activities conducted by the bank or financed by a bank and provided by a non-profit. Two commenters recommended that the OCC provide CRA credit for digital literacy training to LMI individuals focused on using internet banking services as a type of financial literacy program. If the digital literacy training meets a CD criterion, the agency will award CRA credit. Banks that intend to offer these programs may discuss them with their examiners or use the qualifying list confirmation process to ensure that the services they provide will qualify.

[54] *See* 70 FR 44256 (Aug. 2, 2005).

[55] S. 3181, 116th Cong. (2019–2020).

[56] *Oklahoma Tax Comm'n* v. *Sac & Fox Nation,* 508 U.S. 114, 123 (1993).

[57] *Alaska* v. *Native Vill. of Venetie Tribal Gov't,* 522 U.S. 520, 527 (1998).

commenters also expressed the view that investments in qualified opportunity funds already receive enough support and should not receive a multiplier. Commenters criticized the basis for designating opportunity zones because they are based on 2010 data and may not actually benefit areas currently identified as LMI. Commenters that supported providing credit for investments in qualified opportunity funds proposed a safe harbor or presumption in which certain activities would be presumed to benefit LMI communities.

The OCC's purpose in adding a criterion for qualified opportunity funds that benefit qualified opportunity zones in LMI census tracts was to incentivize banks to help meet the needs of LMI individuals and communities located in opportunity zones, which are areas the federal government has identified as needing economic development and job creation. The OCC is clarifying that to qualify under the opportunity zone criterion, activities that finance or support qualified opportunity funds must benefit LMI qualified opportunity zones.[58] Whether an activity benefits an LMI qualified opportunity zone will depend on the facts and circumstances of the activity, including whether it is responsive to the needs of LMI individuals, families, and communities in the opportunity zone. The OCC made no changes to this criterion and has adopted it as proposed. Although the agency is not revising the criterion to provide specific safe harbors or presumptions for certain investments in qualified opportunity funds, as with all activities, a bank may request confirmation that a particular qualified opportunity fund meets the qualifying activities criteria using the process contained in the final rule.

Sports stadiums. The proposal included as an example on the CRA illustrative list an investment in a qualified opportunity fund established to finance improvements to an athletic stadium in an opportunity zone that is also an LMI census tract. The OCC received numerous comments expressing concern with this example. There is a misperception that the proposal would have created a new incentive by giving banks CRA credit for financing athletic facilities. To the contrary, banks have received CRA credit for decades for loans and other financing involving athletic facilities that increase opportunities for economically disadvantaged individuals and areas. A review of publicly accessible CRA PEs provides many examples of this credit, dating back to at least 1993. Many of the examples involve repairs to local high school and municipal facilities that serve local communities. Some involve creative projects involving multiuse facilities and school facilities, and some involve professional sports stadiums.

In response to comments received on the proposal, the agency has replaced the stadium example with an example that better reflects the type of athletic facilities that have been approved historically. In addition, the agency is clarifying that under the final rule the agency will continue to review and give CRA credit for loans and other financing involving athletic facilities that increase opportunities for economically disadvantaged individuals and areas. Under the final rule, the agency will consider the facts and circumstances of specific projects involving athletic facilities, either in the context of a CRA evaluation or pursuant to a request for confirmation that an activity is a qualifying activity.

Ventures undertaken in cooperation with minority depository institutions, women's depository institutions, Community Development Financial Institutions (CDFI), or low-income credit unions. The proposal included ''ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, [CDFI], or low-income credit union'' as qualifying activities if the ventures help meet the credit needs of the communities in which these institutions are chartered, including by promoting the sustainability and profitability of those institutions themselves. Commenters largely supported the clarification regarding activities with minority depository institution, women's depository institution, or low-income credit union and CDFIs and suggested additional examples of activities that should be included in the final rule.

The agency agrees that additional activities undertaken with these institutions should qualify for CRA credit. The agency notes that the examples following the term ventures in the proposal—capital investments and loan participations—are illustrative and not exhaustive. The agency intends the term ventures to broadly encompass, for example, deposits, loans, and other financial and nonfinancial support. The agency has adopted these provisions as proposed, with minor changes to clarify that activities and ventures, other than those expressly included in the proposal, may qualify for CRA credit.

Underserved areas, distressed areas, and CRA deserts. The proposal would have revised the definitions of distressed nonmetropolitan middle-income area and underserved nonmetropolitan middle-income area to include additional census tracts where there are unmet financial needs and to simplify the terms used to describe these areas. Specifically, proposal removed the requirement that a distressed area be a nonmetropolitan area in recognition that there may be middle-income census tracts in metropolitan statistical areas (MSA) that experience high rates of poverty, unemployment, or population loss and, therefore, need financial resources. Similarly, the proposal would also have revised the definition of underserved area to remove the requirement that these census tracts be nonmetropolitan areas to address urban banking deserts that lack access to financial services.

Commenters suggested that the agency proposed these definitions without sufficient research. The agency disagrees with this contention. The agency decided how to modify the existing definitions to capture areas with unmet financial needs based on publicly available census tract demographic information, such as population density, poverty rates, unemployment, population loss, and availability of bank branches.

Commenters also argued that because the agency did not provide information about the census tracts that would be affected, the public was unable to provide meaningful comment.[59] To the contrary, the proposal included clear definitions based on publicly available information for distressed areas and underserved areas, enabling commenters to provide meaningful comment. Furthermore, at least one commenter was in fact able to use publicly available information to review which census tracts would likely be affected by the proposal, as commenters did for the proposed definition of high-cost areas.[60] It is clear from the comments received that commenters were able to look at the definitions included in the proposal and to use public data related to those definitions

[58] One community group suggested that it is unclear whether qualified opportunity funds can make investments through a lower-tier entity, noting that many investors have established two-tier structures in which investments are made through the subsidiary. To the extent that commenters have questions about the requirements or structure of qualified opportunity funds, those questions should be directed to the Internal Revenue Service.

[59] *See, e.g.,* Comment Letter: *National Community Reinvestment Coalition (NCRC),* from J. Van Tol and J. Taylor, at 28 (Apr. 8, 2020).

[60] *Id.*

to analyze and comment on the proposal.

Many commenters, citing research showing continuing racial disparities in lending, expressed the view that communities of color should be included in the definition of underserved areas. Congress enacted the CRA with the purpose of encouraging sound lending to a bank's entire community, and CRA requires the OCC to assess banks' records of meeting the credit needs of their entire community, including LMI neighborhoods. Although the CRA statutory language does not explicitly address communities of color, of course a bank's entire community includes communities of color. Adjustments to the current framework, including those made to the definitions of distressed area and underserved area, will help ensure that banks do more, not less, in LMI census tracts and other identified areas of need, including areas that may have historically been affected by redlining or other forms of unlawful discrimination. The OCC believes the reforms contained in the final rule will have the positive result of benefiting minority populations by increasing activities in areas that often have a high minority population. Further, a bank's CRA performance will be adversely affected by evidence of discrimination or other illegal credit practices.''

The agency notes that MSAs that experience high rates of poverty, unemployment, or population loss are often correlated with high populations of racial minorities. Accordingly, the proposed definitions of distressed area and underserved area would have the positive result of incentivizing CRA activities in certain areas with high populations of racial minorities. Thus, the agency's proposal achieves the benefit urged by the commenters who support explicitly addressing communities of color in the CRA regulations. Therefore, the agency is not implementing the proposed reforms.[61]

Commenters suggested several alternative methods of defining distressed or underserved census tracts, including by looking at tracts with low levels of retail lending after considering the demographics of an area or areas where there are transportation barriers. The agency agrees that it is important to encourage CRA activities in areas that experience lower than expected levels of lending and investments, often known as CRA deserts, and believes that many of these areas would likely be encompassed within distressed and underserved areas due to the demographic makeup of these communities. In the agency's judgment, the proposed definitions of distressed area and underserved area accurately identify the majority of economically distressed areas and other areas with limited access to financial services. The agency adopts these definitions as proposed.

To encourage banks to engage in qualifying activities in CRA deserts, in response to comments received on this issue, the final rule adopts a definition of CRA desert and provides multipliers for qualifying activities in these areas. The final rule defines CRA desert as an area that has been confirmed by the agency to be a CRA desert because it has significant unmet CD or retail lending needs and where: (1) Few banks have branches or non-branch deposit-taking facilities; (2) there is less retail or CD lending than would be expected based on demographic or other factors; or (3) the area lacks community development organizations or infrastructure. The final rule also provides that the agency will maintain an illustrative list of CRA deserts and includes a process for banks to obtain confirmation that an area meets the definition of a CRA desert. Because geographies that meet the definition of CRA desert are subject to change based on increases in the level of CRA activities directed to the area, each bank that seeks to use a multiplier for an activity in a CRA desert must obtain confirmation from the agency that the geography is or continues to be a CRA desert.

Federal Housing Administration (FHA) loan products. Commenters stated that the proposal did not address certain single-family FHA loan products provided to LMI individuals. These comments reflect a misunderstanding of the proposal. The proposed qualifying activities criteria do not include any reference to single-family FHA loan products; however, the CRA illustrative list included in the proposal did include some examples of qualifying activities involving FHA loan products. As noted below, the CRA illustrative list provided along with the proposal is a non-exhaustive, illustrative list of examples of qualifying activities. If a loan originated through an FHA loan program is provided to an LMI individual or family, it will receive credit because it meets the qualifying activities criteria even if it is not included on the illustrative list. However, in response to comments, the OCC has revised the examples to clarify that FHA-guaranteed loans to LMI individuals or families qualify for CRA consideration.

Persons with disabilities. Some commenters recommended that the proposal be revised to address the needs of LMI persons with disabilities and provided several specific suggestions. They also suggested that the agency discuss the applicability of the Americans with Disabilities Act (ADA). The agency notes that activities that benefit or serve LMI individuals with disabilities would meet several of the qualifying activities criteria in the final rule. In addition, the initial CRA illustrative list includes examples of activities that support persons with disabilities. Under the final rule, banks and interested parties can request confirmation that additional activities meet the qualifying activities criteria.

Affiliate activities. In the proposal, qualifying activities included activities in which banks substantively engaged and for which they provided the economic resources, but which were done in the name of another party, such as an affiliate. The agency received comments on the treatment of qualified activities undertaken by bank affiliates. Some community group commenters stated that giving banks a choice of whether to include an affiliate's activities opens up the framework to abuse. They argued that affiliate activities should always be included because the distinction between affiliates' activities and those of a bank is often unclear. Alternatively, commenters suggested that the OCC adjust a bank's CRA ratings if its affiliate's activities varied widely from the bank's activities with respect to abusive practices and the populations served. A few members of the public and some community groups stated that if banks receive credit for affiliate activities, the agency must consider evidence of discriminatory or other illegal credit practices of those affiliates. In contrast, several commenters representing industry trade groups supported retaining the optionality. One industry commenter specifically recommended that activities conducted by an affiliated foundation, under common control of the bank's shareholders, be counted as qualifying activities of the bank. Two industry commenters recommended that the

[61] A commenter also noted that the agency failed to consider its statutory duty to affirmatively further fair housing under the Fair Housing Act, 42 U.S.C. 3608(d), because the proposed rule would have the effect of making affordable housing unavailable. *See* 42 U.S.C. 3604(a). Lending disparities correlated with race, ethnicity, or other protected status are of concern to the agency. As discussed in this preamble, the agency supervises banks' compliance with the federal fair lending laws and regulations through its examination and enforcement functions. Further, the final rule does not, on its face or through implementation, make any housing unavailable in violation of the Fair Housing Act. Moreover, the final rule increases incentives for financing housing affordable to LMI individuals and families.

agency permit banks to exclude affiliate activities from the retail lending distribution tests.

The agency has carefully considered the comments received. In the final rule, the agency decided to limit consideration of CRA activities to those conducted directly by a bank to be more consistent with the CRA statute. The agency has made clarifying edits throughout the rule to reflect this policy decision. The CRA statute grants the agency the authority to evaluate the CRA performance of insured depository institutions. The agency notes, however, that it considers qualifying activities to be conducted by a bank if the bank finances or otherwise supports a qualifying activity, even if the transaction involves an intermediary. The final rule will not require or provide the option for banks to consider affiliates' activities.

CRA illustrative list. The proposal provided that the agency would maintain a publicly available, non-exhaustive, illustrative list of examples of qualifying activities that meet the rule's qualifying activities criteria, as well as examples of activities that the agency has determined, in response to specific inquiries, do not qualify. The proposal also established a process for a bank or interested party to submit a form through the OCC's website to seek agency confirmation that an activity is a qualifying activity and stated that the CRA illustrative list would be updated each time an activity is confirmed to be or determined not to be a qualifying activity. In addition, the proposal provided that the list would also be published in the **Federal Register** at least every three years, at which time the agency would seek public comment on the list. Following this, the agency could add activities to the list that meet the qualifying activities criteria or remove activities that no longer meet the criteria.[62]

The agency received a number of comments on the proposed CRA illustrative list of qualifying activities and the processes for updating the list. Several commenters expressed concern that the list would be viewed as a complete list of permissible activities, as opposed to an illustrative list of examples. Others stated that a list would serve to discourage banks from engaging in activities that are not on the list, thereby limiting innovation. Some community group commenters stated that the CRA illustrative list included examples of activities that would not provide community members with financial inclusion and economic opportunity, with one commenter referencing the examples involving in-kind donations of computer equipment and provision of homebuyer education to buyers of single-family housing. One community group commenter suggested that the housing tax credit example on the illustrative list should be clarified so that only 60% of the units meet the 30% of 80% of the area median income requirement. Certain community group commenters opposed the list but supported the confirmation process. A few commenters also suggested that a best practice guide, informed by community and consumer-serving organizations and public input, would be better than a list.

In response, the agency reiterates that the list is illustrative only. It is not a complete list of activities that meet the regulatory criteria; no such list exists, nor will it exist under the final rule. Banks will receive CRA credit for any activity that satisfies the qualifying activities criteria, regardless of whether it is on the CRA illustrative list. Moreover, the OCC encourages banks to engage in innovative activities that are responsive to the needs of their communities and, where there is uncertainty, to confirm with the agency that an activity not on the CRA illustrative list is qualifying.[63]

Commenters also addressed the process in the proposal for banks to seek agency confirmation that an activity is a qualifying activity. Commenters noted that limiting this process to banks would deprive interested persons of the opportunity to gain important clarity and participate in the CRA process. Two community groups recommended that local input should inform the confirmation process, and one industry commenter suggested that a joint group consider confirmation requests, including representatives from the originating district or regional office. The agency agrees that public input and active stakeholder engagement is important to achieve the goals of the CRA, and the final rule allows any interested party to request confirmation that an activity is a qualifying activity. Because the question of whether an activity meets the qualifying criteria is a matter of agency interpretation, the agency will make these decisions based upon all available information.[64]

After considering the specific suggestions the agency received, the OCC will endeavor to publish the CRA illustrative list on its website in a searchable format. The final rule provides that the agency will respond directly to requests for confirmation and post those responses to its website. The OCC will do so consistent with its internal processes, policies, and procedures. Banks can reference those responses as interpretive guidance to determine whether particular activities meet the qualifying activities criteria. The agency plans to update the CRA illustrative list on an annual basis with the activities that were determined to meet and not to meet the qualifying activities criteria during that year.

Other commenters requested that the CRA illustrative list identify CD lending, CD investment, and CD services separately. Because any CD loan, investment, or service qualifies under the rule if it satisfies one or more CD criteria, the agency does not plan to further segregate the list by type of CD activity unless it is necessary based on the facts and circumstances (*e.g.,* the activity can only be a CD investment). Another commenter requested that the list include guidance on the necessary documentation for each activity. As noted above, the agency plans to provide guidance on the application of the final rule.

One industry commenter recommended expanding the confirmation process to include confirmation of whether a branch would be included in the numerator of the branch distribution component of the CRA evaluation measure, discussed below. Branches in LMI census tracts and other identified areas of need are not qualifying activities. As such, the qualifying activities confirmation process does not include these branches. Under the final rule, as discussed below, if a branch is not

[62] The initial proposed illustrative list was available for review on the agency's website at the time the proposal was published, as well as in section V of the proposal.

[63] In this regard, the agency notes that the final rule encourages innovativeness and responsiveness through multipliers to the quantified dollar value of the activities and through consideration of these qualitative aspects of CRA activities as part of performance context.

[64] Commenters also addressed the statement in the proposal's preamble that the agencies would collaborate on the CRA illustrative list, stating that the manner in which this collaboration would occur was unclear. One industry commenter recommended that the agencies respond jointly to confirmation requests. One community group recommended that the CRA illustrative list reflect consensus among the OCC, FDIC, and the Board. A state regulator recommended that state regulators have input as well. State regulators may provide input on the illustrative list using the confirmation or notice and comment process described in the final rule. The FDIC and the Board are not joining this rulemaking, and therefore presumably will not be maintaining illustrative lists comparable to the OCC's list. However, the OCC notes that it coordinates with these agencies on a routine and ongoing basis regarding areas of common interest.

located in an LMI census tract or other identified area of need, a bank must demonstrate that it serves one of those areas to be included in the numerator of the branch distribution component of the CRA evaluation measure.

A few community groups argued that the periodic updates to the CRA illustrative list each time an activity is confirmed to be or determined not to be a qualifying activity should be subject to notice and comment under the Administrative Procedure Act (APA). The agency disagrees. The CRA illustrative list is a non-exclusive compilation of activities that the agency has determined do or do not meet the qualifying activities criteria. The list itself does not set forth the regulatory qualifying activities criteria, nor do changes to the list in any way alter or otherwise affect these criteria. Under the final rule, the periodic updates of the list will reflect the agency's opinions on whether specific scenarios presented by banks or interested parties meet the qualifying activities criteria. These opinions on the applicability of the rule are interpretive rules, which are commonly issued by a government agency in response to requests for guidance from the public on how statutes and regulations apply in specific situations.[65] These interpretations provide stakeholders and other interested parties with timely information and foster a more nimble and responsive government. Under the APA, an interpretive rule is exempt from notice and comment.[66]

With respect to the periodic publication of the CRA illustrative list in the **Federal Register** every three years, some commenters stated that this should take place no more often than every five years because a more frequent review could impede banks' ability to rely on the CRA illustrative list. Moreover, the commenter argued, frequent revisions could make the list susceptible to changes based on political pressure, rather than public policy rationales. The commenter also suggested that activities removed from the list should qualify for credit for two additional years to further enable reliance on the list and allow banks to better modulate product development and political headwinds. The agency agrees with the commenter that a five-year review would increase the ability of banks to rely on the list and provide them with certainty, particularly in light of how long some activities take to start up and wind down, and the agency has made this change in the final rule. With respect to the two-year grace period, the agency does not believe such change is necessary because a bank that received credit for an activity that is subsequently removed from the list (because it no longer meets the regulatory criteria) will continue to receive CRA credit while the activity remains on the bank's balance sheet.

In response to suggestions that the CRA illustrative list be updated more frequently, the agency notes that it plans to update it on an annual basis in response to requests from any bank or interested party for confirmation that an activity qualifies. For the reasons described above, the agency is not adopting a more frequent public notice and comment update process.

Certain community groups recommended that banks only receive credit for activities on the CRA illustrative list if they benefit LMI individuals. The agency is not adopting this recommendation because the final rule, like the current regulations, provides CRA credit for some activities with benefits that extend beyond LMI individuals and families.

The agency received numerous comments requesting that the approval time for a request for consideration of a new activity should be shorter than the six months that was proposed. Other commenters recommended a conditional review and approval process, potentially with a prompter conditional determination. The agency does not think that a conditional approval process is warranted because it could create uncertainty. The agency does agree, however, that to be useful, the approval process should be shortened, and the final rule provides for a 60-day approval process, with the option of a 30-day extension. To manage the agency's resources effectively, the agency expects to prioritize those requests relating to activities with definite terms and parameters and in which banks are ready to engage. The proposal also established a process for a bank to submit a form through the agency's website to seek agency confirmation that an activity is a qualifying activity.[67] The final rule adopts this process.

The CRA illustrative list issued on the OCC's website in conjunction with this final rule includes additional or modified examples conforming to changes in the regulatory text, along with technical and clarifying changes. Additionally, the OCC added several examples to provide further guidance or to address input from commenters, including examples addressing activities that respond to the current pandemic and the technology and health services needs of LMI individuals.

Other than the changes discussed above, the final rule adopts the CRA illustrative list and confirmation process provisions as proposed.

Qualitative aspects of qualifying activities. At least a few community groups and individual commenters stated that the proposal's failure to consider qualitative criteria for CRA activities could result in products receiving credit even though they do not support pathways for LMI individuals to move to lower-cost products. Other commenters suggested that qualitative performance context considerations should only supplement a bank's presumptive rating. As previously noted, the general policy direction of the agency's reform is to increase the level of transparency, objectivity, and consistency of application throughout the CRA regulation. The need for transparency, objectivity, and consistency is a point of general agreement among commenters throughout the reform process, in which the agency has engaged over the past several years. Increasing transparency, objectivity, and consistency will increase business certainty and in turn, incentivize a greater amount of qualifying activities. The qualifying activities criteria and CRA evaluation measure, for example, provide this increase in transparency, objectivity, and consistency. At the same time, as discussed in the performance context section below, the agency recognizes that not every aspect of CRA can be quantified and made objective. Moreover, the agency believes that qualitative considerations are an important component of CRA

[65] The critical feature of interpretive rules is that they are issued by an agency to advise the public of an agency's construction of the statutes and rules that it administers. Attorney General's Manual on the Administrative Procedure Act 30 n.3 (1947); *accord Perez* v. *Mortgage Bankers Association,* 575 U.S. 92 (2015) (citations omitted). While interpretive rules do not require notice and comment, and therefore may be issued more expeditiously than legislative rules, interpretive rules may not set legal expectations that extend beyond the underlying statute or regulation. *Id.* (noting that interpretive rules do not have the force and effect of law).

[66] 5 U.S.C. 553(b)(A). *See also Shalala* v. *Guernsey Memorial Hospital,* 514 U.S. 87, 99–100 (1995) (noting that an APA rulemaking is not required for an interpretive rule that does not effect a change in agency regulations); *cf. American Mining Congress* v. *Mine Safety & Health Administration,* 995 F.2d 1106, 1112 (D.C. Cir. 1993) (noting that one indicia of an interpretive rule is whether, absent the interpretive rule, the agency would have a legal basis for taking an enforcement action or other action to confer benefits or ensure the performance of duties).

[67] Under the final rule, an activity is confirmed as a qualifying activity if the requestor is not informed of an objection within the time allotted for confirmation.

evaluations and, therefore, will consider qualitative aspects of banks' CRA performance through the application of performance context, including whether the bank is being responsive to community needs. As discussed below, the performance context factors contained in the proposed and final rules and the standardized application of those factors will help ensure greater transparency and consistency in application of even the qualitative components of the CRA review.

Retail banking services and CD services. The proposal did not include a service test, which under the current framework is used to evaluate banks' retail banking services and delivery systems [68] and CD services. The proposal instead sought comment on how retail banking services and delivery systems, other than branch distribution, could be quantified or whether they should be considered as part of performance context. The proposal included in the CRA evaluation measure a component that accounted for the distribution of branches in LMI areas and other identified areas of need.

The proposal also sought comment on the proposed method of quantifying CD services (*i.e.,* bank employee time spent volunteering as a representative of the bank on qualifying activities or supporting qualifying activities of another bank or that are cooperative ventures with a minority depository institution, women's depository institution, or low-income credit union or CDFI).[69] The NPR quantified the dollar value of CD services based on the hourly salary as estimated by the Bureau of Labor Statistics (BLS) for the job category of the service provided for the number of hours provided. The proposal solicited feedback on other methods of quantifying CD services, including using a standard figure such as the median hourly compensation value for the banking industry, which was approximately $36 when calculated based on prior Call Report data.[70] A few industry and community group commenters objected to the method used to quantify CD services in the proposal, suggesting that it would provide varying amounts of credit for CD services, would not adequately reflect the positive impact that CD services have on communities, and would be unduly burdensome to track given the credit provided for CD services. A few commenters offered suggestions on other ways to quantify or value service hours, including the suggestion that a standard figure be used for all volunteer hours.

The agency also received comments regarding the elimination of the service test. While certain commenters acknowledged that performance under the service test can be confusing and does not rely on quantifiable criteria, many community groups, individuals, and government commenters asserted that the service test remains important. Commenters further argued that minimizing consideration of bank accounts and other services and branches that serve LMI individuals and communities would result in LMI communities becoming more dependent on check cashing and other high-cost services. These commenters argued that the service test should be retained and improved in the final rule to provide banks greater incentive to provide affordable deposit accounts and other banking services to LMI individuals and communities. Some industry, community group, government, and public commenters indicated support for including the provision of retail banking services to LMI communities in the CRA evaluation measure. Other commenters made recommendations on various products and services that should be considered or suggested that banks be incentivized to offer retail products and services to particular communities such as LMI, minority, or immigrant communities.

The agency carefully considered commenters' concerns and believes that the proposal accounted for services appropriately and was consistent with the agency's actual examination experience. Specifically, in the agency's experience, evaluations have focused on three aspects of banks' service-related activities: (1) Branch distribution; (2) product offerings that are tailored to meet the needs of LMI individuals; and (3) CD services. The final rule does not retain the service test as it appears in the current framework. Under the final rule, retail banking services and delivery systems and CD services will be accounted for both quantitatively and qualitatively.

The agency will account for retail banking services and delivery systems qualitatively as part of performance context. The agency considered options for quantifying retail bank services and delivery systems but determined that these aspects of a bank's business do not lend themselves to quantification and are best evaluated using qualitative criteria. As discussed below, the final rule also retains the branch distribution component of the CRA evaluation measure and enhances the amount of credit that a bank may receive for branches in LMI census tracts and other identified areas of need.

With regard to CD services, the agency revised the treatment of CD services in the final rule. To reduce the burden associated with tracking the compensation rates associated with the different job categories in the BLS data, the final rule quantifies CD services based on the standard figure for the median hourly compensation value for the banking industry calculated using Call Report data, which is $38 based on 2019 Call Report data. In addition, as discussed below, the quantified dollar value of CD services will be adjusted by multipliers, as applicable.

In administering the CRA regulations, the agency will take appropriate steps—such as providing examination tools and guidance—to ensure consistent application of performance context. The agency will incorporate consideration of a bank's retail banking services targeted to LMI individuals, record of opening and closing branches, and availability and effectiveness of its alternative systems for delivering retail banking services in LMI census tracts and to LMI individuals, the qualitative aspects of its branch distribution, and the qualitative aspects of CD services in the standardized application of performance context. In the agency's view, these are important aspects of a bank's CRA performance that are best considered qualitatively, not quantitatively.

Commenters also requested clarity on whether activities conducted in a middle-income census tract which is surrounded by LMI tracts will qualify as a CD service. Under the final rule and

[68] Under the current framework, the service test is used to evaluate a bank's distribution of branches, record of opening and closing branches, the availability and effectiveness of the bank's alternative systems for delivering retail banking services to LMI individuals and in LMI census tracts, and the range of services provided in low-, moderate-, middle-, and upper-income census tracts and the degree to which they are tailored to meet the needs of those census tracts.

[69] A few industry commenters supported the proposal to no longer limit CD services to the provision of professional services or financial literacy. In contrast, four commenters suggested that CRA credit for volunteer services should be limited to activities that are unique to skillsets relevant to banking and financial expertise. A few community group commenters and two government commenters suggested limiting CRA credit for volunteer services, including to supporting organizations with a primary CD purpose or to the extent the activity benefits LMI individuals. The final rule, like the proposal, no longer requires that CD services be related to the provision of financial services (*i.e.,* banks would receive credit for all volunteer hours, including manual labor, provided to a CD project). As explained in the proposal, this expansion recognizes that support for a CD project may take many forms, all of which are required for the project to meet the needs of a community, and that all these forms of support should qualify for CRA credit, consistent with the goals of CRA.

[70] The proposal stated that the $36 per hour figure was based on BLS data. In fact, the figure was calculated using data from the Call Report.

consistent with the guidance in the current *Interagency Q&As,*[71] if a bank can demonstrate that an activity meets the qualifying activities criteria it will receive CRA credit. Stated another way, qualifying activities do not need to occur in LMI census tracts or other identified areas of need to benefit or serve those areas.

Purchases of qualifying activities. The proposal provided that qualifying activities are retail loans and CD activities that help meet the credit needs of a bank's entire community, including LMI communities, if they meet the qualifying activities criteria at the time the activity is originated, made, or conducted. The proposal further stated that if an activity is subsequently purchased by another bank, it is a qualifying activity if it meets the criteria in this section at the time of purchase.

The agency received comments indicating that it was unclear whether banks were required to requalify purchased loans and investments by collecting data on the activity at the time of purchase or whether the purchasing bank could rely on the information provided at the time the loan was originated or the investment was made. The final rule includes clarifying edits to the qualifying activities criteria section regarding the subsequent purchase of activities. In particular, the agency clarified how a bank determines whether an activity that is subsequently purchased by another bank is considered a qualifying activity. The final rule clarifies that if a bank purchases a loan or investment that was a qualifying activity, it remains so unless the agency determines prior to the sale that the activity is no longer a qualifying activity. Essentially, if a bank purchases a loan or investment that met the qualifying activities criteria when it was originated or made, and based on the facts provided at that time it still meets the qualifying activities criteria, it remains a qualifying activity (*i.e.,* banks do not have to requalify purchased activities based on the facts at the time of purchase by, for example, obtaining the current income of a borrower who was LMI when the loan was originated). Rather, whether activities qualify is based on the facts at the time originated or made). In contrast, if a loan or investment no longer meets the qualifying activities criteria at the time of purchase based on the information provided when it was originated or made then it will not be a qualifying activity for the purchasing bank. The OCC also made several technical and conforming edits related to these changes throughout the final rule.

Other suggested qualifying activities. Some commenters suggested the agencies identify additional activities that would qualify for CRA consideration, including for example, CD corporations; CD venture capital organizations; work done to enhance digital literacy and/or broadband and digital access; disaster relief efforts; programs and products focused on general education; and environmental initiatives. Commenters also suggested miscellaneous housing activities should be considered, including housing counseling, foreclosure prevention efforts, loss mitigation efforts, and activities of state housing finance agencies. Other commenters suggested qualifying activities should include investments, lending, and services involving legal assistance for LMI individuals or supporting interest on lawyer trust accounts; efforts to remove language barriers; hours of bank operation; equity investments in minority depository institutions, women's depository institutions, or low-income credit unions and loan participations sold to and from minority depository institutions, women's depository institutions, or low-income credit unions, including investments made by those institution in other such institutions, loans to non-profits and other support of social and racial justice advocacy non-profit organizations; activities related to rural development; SBA 504 loans and 7(a) loans; microloan intermediaries (as defined in 13 CFR 120.701); financing or support for SBICs regardless of the location of the SBIC or its investments; activities that support communities of color; tax credits and other community reinvestment grants; and lending that helps reduce the combined cost of housing and transportation, including vehicle loans that support transportation to and from employment.

Other commenters suggested qualifying activities should include activities such as payday loan alternatives, including small dollar loans benefitting LMI; activities related to child-care; activities related to revitalization efforts; financing in support of projects under a local government's Community Development Block Grant; creative placemaking projects; activities that provide borrowers access to asset building products; activities that increase credit scores; investments in account opening partnerships that measurably improve financial inclusion; investments into the Puerto Rico Housing and Human Development Trust Fund; products and services of military banks; national or regional funds; documented, verified collaboration with community partners, such as investments in workforce development programs, financial education partnerships, and microlending or small-dollar loan programs; and membership in and all activity in their region's Federal Home Loan Bank.

Regarding revitalization and stabilization efforts, some community group, industry, and government commenters stated their opposition to the removal of the revitalization and stabilization criteria from the definition of CD or stated that the criteria should be added back into the regulation. Regarding the consideration of various activities, a few commenters offered suggestions on possible criteria to consider activities. A few commenters discussed whether LMI individuals should be the focus of qualifying activities. Community group commenters stated that no new CD financing should count as qualifying if those investments decrease a bank's investments in core CRA activities, which include lending to LMI individuals. Community group commenters stated that all investments should be analyzed for their impact on historically redlined communities. Other commenters offered suggestions on qualifying activities criteria that could be used to consider activities, including that the agency could require banks to secure endorsements of activities from local community leaders; consider community wealth building models; and incentivize prime products rather than high-cost products.

The final rule addresses these suggestions by providing clear, yet flexible, criteria describing what activities will count as CRA qualifying activities. Many of the suggestions made by commenters are likely to meet the qualifying activities criteria and some are included in the CRA illustrative list. In addition, the agency will consider additions to the CRA illustrative list on a case-by-case basis and periodically seek public comment and update the list.

Quantifying a bank's qualifying activities, general. Except for retail loans sold within 90 days of origination and activities that are not held on a bank's balance sheet, the proposal would have generally quantified qualifying activities based on their average month-end on-balance-sheet value.[72] The proposal

[71] *See Interagency Q&As,* § ____.12(g)—2, 81 FR at 48525.

[72] One industry commenter suggested that there was a conflict between: (1) The proposed regulatory text's description of the value of an activity as the average of the dollar value as of the close of

included separate provisions for quantifying activities that are not held on a bank's balance sheet. The proposal quantified most activities based on their on-balance-sheet value to recognize the value of stable commitments to communities and disincentivize churning of activities. However, the agency also recognizes that providing initial credit to borrowers or organizations is enormously valuable. To account for this value, the proposal quantified retail loans that were sold within 90 days of origination at 25 percent of the dollar value at origination.

At least a few community groups expressed the view that the proposal's approach to retail loans sold within 90 days of origination may result in fewer retail loan originations and penalize banks that originate loans to sell in the secondary market. At least a few industry commenters voiced similar concerns that the proposal undervalued originations for retail loans that are sold and disfavored the originate-to-sell business model.[73] Both community group and industry commenters focused on this issue as it pertained to mortgage loans.

The agency understands the concerns that these commenters have raised and agrees that retail loan originations are an important type of credit for populations and communities of need. Further, the agency's intent is not to favor one business model over another. To examine the impact of various weighting schemes, the agency used the 2018 HMDA data[74] to estimate: (1) How many banks have originate-to-sell business models and how many are portfolio lenders;[75] (2) what percentage of the LMI home mortgage origination market those banks represent; and (3) how assigning different weights would impact the CRA evaluation measures of portfolio lenders and banks with originate-to-sell business models. The agency's analysis revealed that originating and selling retail loans accounts for a non-trivial portion of the LMI home mortgage market and a weight equivalent to three months of holding the loan on the bank's balance sheet may not sufficiently reflect the magnitude of the origination dollar volume for banks that originate to sell vis-à-vis banks that hold the loans in portfolio. Thus, the agency has revised the rule so that retail loan originations sold at any time within 365 days will receive credit for 100 percent of the origination value. Specifically, under the final rule, retail loans originated and sold within a year are quantified based on their full origination value. This method increases the valuation of these loans as compared to how they would have been valued based on an on-balance-sheet quantification. For example, a $100,000 mortgage loan that was originated in month one and was on a bank's balance sheet as of the last day of the month for months one, two, and three, before being sold in month four would receive a value of $100,000 for that twelve-month period. If that loan was valued based on its on-balance-sheet value, assuming the on-balance-sheet value remained constant, it would have received a value of $25,000 toward that year's on-balance-sheet value. By providing that additional credit to retail loans originated and sold within one year, the agency recognizes the importance of originations and also ensures that banks with an originate-to-sell business model are not disadvantaged. The agency believes the change to the rule addresses any concerns about an inconsistency between the proposed regulatory text and preamble regarding the treatment of loans originated and sold within 90 days. The agency also is clarifying that this treatment applies only to retail loans.

The agency received comments from community groups, individuals, and government commenters suggesting consideration of originations and investments instead of or in addition to balance sheet activity. These commenters suggested that considering only balance sheets, and not originations, could result in banks meeting targets based on their current balance sheets and engaging in less CRA activities. Additionally, community group and industry commenters suggested that the agencies should factor into ratings whether banks have decreased originations of equity investments or affordable housing loans relative to the prior assessment period. One government commenter suggested that there should be a minimum level of affordable housing investment required and community group commenters and a government commenter suggested there should be minimum holding periods for CRA qualifying activities. Industry and community group commenters discussed potential harm caused to the bank by using the balance sheet approach, which included increasing safety and soundness risks and penalizing banks with limited portfolio capacity. One industry commenter suggested the treatment is inconsistent with the Basel III capital rules, which recognize that ownership of servicing assets entails an ongoing financial commitment even when the loan is sold.

With regard to CD loans, the agency believes that the on-balance-sheet value of these activities best reflects the value to the community.[76] Further, considering the on-balance-sheet value encourages banks to provide the credit and investment terms that best fit the needs of the beneficiary. Therefore, the agency is not changing the general treatment of CD loans and CD investment.[77]

A few community groups, some government commenters, and one individual commenter argued that the

business on the last day of the month for each month the activity remained on-balance sheet; and (2) the preamble's description of the value of a mortgage backed security (MBS) purchased and sold over a one-month period. The agency recognizes the ambiguity created by the text of the proposed regulation and has removed the phrase for each month the loan or investment is on-balance sheet from the final rule. The agency also made a technical change in the final rule by adding the word quantified before the phrase dollar value.

[73] These commenters gave several reasons for their position, including: (1) Originating mortgage loans is costly because banks have to create and maintain consumer compliance infrastructure, ensure adherence to the underwriting guidelines of the Government Sponsored Entities (GSE) and other secondary market participants, and conduct marketing and outreach; (2) selling to the secondary market helps banks manage interest rate risk and expands a bank's ability to finance mortgages; (3) product offerings that are retained on balance sheet (such as balloon or adjustable rate mortgages) are not as affordable to LMI individuals; (4) holding loans on book to avoid the 75 percent haircut would not be an efficient use of capital; (5) limiting CRA credit would drive banks from residential mortgage lending and cede this territory to non-banks; (6) this undervaluation would drive banks to sell fewer mortgages on the secondary market and cause the CRA and GSE Affordable Housing Goals to not be aligned; and (7) incentivizing the retention of LMI loans in portfolio could threaten safety and soundness.

[74] Only banks with assets of $2.5 billion or greater were included in the analysis. Also excluded were: (1) Institutions regulated by the National Credit Union Administration and HUD; (2) institutions for which the agencies did not have deposit or asset size information; (3) institutions reporting no home mortgage loan balances on the Call Report; and (4) loans where the values of income, area median family income, or loan amount were missing.

[75] For the purposes of this analysis, to determine how many loans were sold by a bank, the agency used the purchaser code in the HMDA data that identifies whether the loan was sold within the HMDA calendar year. This may underestimate the number of loans an institution sells, particularly loans originated near the end of the 2018 that were sold in 2019. Subject to these assumptions, the agency assumed a bank was a portfolio bank if the proportion of LMI loans originated in 2018 that were sold in 2018 was less than 25 percent. Conversely, the agency assumed a bank was an originate-to-sell bank if the proportion of LMI loans originated in 2018 and sold in 2018 was at least 75 percent.

[76] The final rule also quantifies CD investments that are held on a bank's balance sheet based on their on-balance-sheet value.

[77] As discussed below, the agency revised the quantification method for commitments to lend and LIHTC and NMTC syndications.

proposal undervalues Low Income Housing Tax Credit (LIHTC) and New Markets Tax Credit (NMTC) syndications or sponsorship activities, thus discouraging banks from supporting activities such as affordable housing. These commenters observed that syndication activities are largely not reflected on banks' balance sheets. If syndicators or sponsors were not willing to take on this role, these commenters expressed concern that other banks that make investments in funds supporting these projects (community banks in particular) might not be able to participate in these activities. Several industry commenters suggested that the agency provide substantial CRA credit for these activities. Some commenters suggested credit for a percentage, such as 50 percent, of the total value of the syndication for the term of the investment.

After careful consideration of these comments and the agency's experience, the agency agrees that appropriate consideration should be given to the activities of syndicators and sponsors.[78] To this end, the final rule provides credit for these activities as follows: Banks serving as syndicators or sponsors of funds supporting LIHTC or NMTC projects will receive credit for the total dollar value of the fund in the year it was originated, without the application of a multiplier, to provide CRA credit for the bank's role in syndicating or sponsoring the LIHTC or NMTC investment. The syndicating or sponsoring bank will also receive additional credit for the LIHTC or NMTC investment after the transaction is complete. If the bank holds a portion of the syndication on its balance sheet, it will be quantified in the same manner as other CD investments. Specifically, the syndicating or sponsoring bank will receive credit for the portion of the investment that it retains on its balance sheet based on the average on-balance-sheet value of the investment, as adjusted for applicable multipliers. The syndicating or sponsoring bank will also receive credit for the portion of the syndication that is sold. For the syndicating or sponsoring bank, the portion of the investment that is sold is quantified as 50 percent of the dollar value of the portion of the syndication sold in the year it is sold without the application of multipliers. In addition to the credit provided to the syndicating or sponsoring bank, a bank that purchases an interest in a LIHTC or NMTC syndication and holds the investment on its balance sheet will also receive credit for the quantified dollar value of the investment, adjusted for applicable multipliers. In the agency's view, the final rule's treatment of syndication or sponsorship activities supporting LIHTC and NMTC funds will give appropriate credit to these activities without overvaluing them in comparison to other qualifying activities.

Quantifying a bank's qualifying activities, pro-rata credit. The proposal also expanded the circumstances in which banks receive pro-rata credit for qualifying activities beyond those activities that receive credit under the current framework. Under the current framework, only activities involving mixed-income housing that includes a set-aside required by federal, state, or local government for affordable housing for LMI individuals receive pro-rata credit. Under the proposal, in quantifying the value of CD activities, certain CD activities that provide some benefit to, but do not primarily benefit, specified populations, entities, or areas would receive *pro-rata* credit equal to the partial benefit provided.

Some commenters, including members of Congress, government, community groups, and industry, opposed the proposal to provide pro-rata credit for activities that only partially benefit LMI communities. Certain community groups expressed concern regarding the provision for pro-rata credit for certain qualifying activities and stated that such credit should be given only if the benefit to LMI individuals or communities can be reliably estimated and verified. Some industry commenters expressed support for the provision of pro-rata credit but asked for clarity on how to assign such credit to qualifying activities. The agency believes that pro-rata credit is appropriate and that such credit should be given only where the bank can provide a reasonable estimate of the benefit to LMI individuals or families, CRA-eligible businesses or farms, or LMI census tracts or other identified areas of need. The burden is on the bank to demonstrate the impact of its investment, including providing support for the pro-rata share of credit used to quantify its qualifying activities. Given the variety of CRA activities and the array of facts and circumstances that may be involved, however, the agency does not believe that a one-size-fits-all approach for calculating the proportion of benefit is feasible or appropriate. The agency will accept reasonable methods for calculating the pro-rata share of a qualifying activity. An example of a reasonable method of calculating the pro-rata share that the agency would accept was illustrated in the comments from one community group: The construction of a new rail line that goes through 10 census tracts and serves four LMI tracts with multiple stations would clearly benefit LMI tracts.[79] In this scenario, the pro-rata credit could reasonably be 40 percent of the dollar amount of a bank's construction loan for the project because four of the 10 census tracts are LMI. Similar calculations based on the facts and circumstances of a given qualifying activity would likewise be reasonable. Other examples of a reasonable basis for the calculation of pro-rata LMI benefit of a qualifying activity would include, as applicable, the percentage of: (1) Students at a school that are eligible for free or reduced-price meals under the USDA's National School Lunch Program; (2) individuals who receive or are eligible for Medicaid; and (3) recipients of government assistance programs that have income qualifications equivalent to, or stricter than, the definitions of LMI as defined by the CRA regulations.[80] In the agency's judgment, the process for determining and supporting the use of pro-rata credit is sufficiently robust and involved that banks are unlikely to spend resources piecing together small prorated amounts of CRA activities to meet their CRA evaluation measures.[81] Other than the changes described above, the agency is adopting the quantification provisions as proposed.

Qualifying activities value, general. Under the proposal, banks evaluated under the general performance standards would have determined their bank presumptive ratings and assessment area presumptive ratings by first calculating their *qualifying activities values,* which are the sum of the quantified dollar value of qualifying activities that receive credit after being adjusted by multipliers. The final rule makes several changes to the quantification of the qualifying activities included in banks' qualifying activities value and assessment area qualifying activities values. The final rule also clarifies that a bank's

[78] *See* GAO–17–285R, Low Income Housing Tax Credits: The Role of Syndicators at 7 (Feb. 16, 2017) (describing multiple roles of syndicators in developing and monitoring LIHTC projects) *available at https://www.gao.gov/products/GAO-17-285R* .

[79] *See, e.g.,* Comment letter, *National Community Reinvestment Coalition (NCRC),* from J. Van Tol and J. Taylor, at 25 (Apr. 8, 2020).

[80] These examples are reasonable proxies derived from the *Interagency Q&As. See Interagency Q&As* § ____.12(g)(2)—1, 81 FR at 48526.

[81] The agency also made a clarifying change related to the calculation of the partial benefit and primary benefit associated with certain qualifying activities. Specifically, the final rule defines the terms partially and primarily as opposed to partially benefit and primarily benefit.

qualifying activities value and assessment area qualifying activities values include the quantified dollar value of all qualifying activities originated, made, performed, or on the bank's balance sheet during the year and removes language related to the consideration of affiliate activities. Aside from these revisions and the changes described below with regard to multipliers, the agency is adopting the qualifying activities value provisions as proposed.

Qualifying activities value, multipliers. Under the proposal, banks would have calculated their qualifying activities value and assessment area qualifying activities values (*i.e.,* the numerator in the CRA evaluation measure) using the quantified dollar value of their qualifying activities, as adjusted for applicable multipliers. In the proposal, multipliers would have applied to several different types of qualifying activities including: (1) All CD loans, CD investments, and CD services undertaken in conjunction with CDFIs, except activities related to mortgage-backed securities; (2) all other CD investments, except for CD investments in mortgage-backed securities and municipal bonds; and (3) all other affordable housing-related CD loans. The purpose and design of the multipliers was to incentivize banks to engage in activities that were particularly valuable and important from a CRA perspective by giving banks additional value towards their CRA evaluation measures for these activities.

The agency received comments that both opposed and supported the use of multipliers. Some community groups stated that the use of multipliers and the proposal's reliance on banks conducting their own analyses would lead to a decrease in CRA activity. Community groups also expressed their belief that multipliers would reduce the transparency regarding whether the dollar values used in CRA evaluations reflected the raw dollar amount or multiplied dollars, frustrating the purpose of the CRA and making it more challenging to determine whether banks were meeting community needs. These commenters suggested that the agency should apply less weight to activities that are less responsive, similar to how current evaluations weigh retail lending by volume. In the alternative, these commenters recommended that if multipliers are used, the agency should disallow them for banks that reduced the dollar amount of CD activity conducted in the current evaluation period compared to what the bank conducted in the prior evaluation period. These commenters also asserted that the agency would have to update and refine the multipliers frequently to respond to new circumstances and questions. Community group, industry, and public commenters also suggested a range of additional restrictions for use of a multiplier.[82]

In contrast, certain industry commenters supported the concept of multipliers and stated that the agency should provide larger multipliers.[83] Commenters also recommended providing multipliers for additional qualifying activities.[84] Additionally, two industry commenters recommended counting the value of a donation or grant for at least one full evaluation period.

The agency agrees that certain activities are particularly valuable to LMI communities and other identified areas of need. Further, the dollar value of certain activities may not accurately reflect the positive impact that the activities provide to these communities. However, the agency also recognizes the potential for multipliers to result in banks to achieving certain levels of performance while conducting less dollar volume of CD activities, which could have a negative effect on those same communities.

After considering the comments received in opposition and in support of the use of multipliers for certain qualifying activities, the OCC made several revisions to the treatment of multipliers in the final rule. First, to ensure that the use of multipliers does not reduce the level of CD activities that banks conduct, a bank is not eligible for multipliers until the quantified dollar values of its current period CD activities are approximately equal to the quantified dollar values of CD activities considered in its prior evaluation period. Second, in response to comments that branches in LMI census tracts and CD services were not appropriately valued in the proposal, the final rule adds retail loans generated by branches in LMI census tracts and CD services to the list of activities eligible for a two times multiplier. Third, to recognize the importance of minority depository institutions, women's depository institutions, or low-income credit unions to the communities they serve, the final rule includes a two times multiplier for qualifying activities involving those institutions. Fourth, the final rule includes an additional two times multiplier for qualifying activities in CRA deserts. The CRA desert multiplier applies to all qualifying activities conducted in a CRA desert and would be in addition to the multipliers that apply based on the type of qualifying activity or whether it was generated by a branch in an LMI census tract. A bank must request that the OCC confirm that an area is a CRA desert before receiving the CRA desert multiplier. The final rule includes a process for confirming that a geographic area is a CRA desert where multipliers would apply to banks' qualifying activities. Lastly, under the final rule, the agency may determine that because of the responsiveness, innovativeness, or complexity of certain qualifying activities eligible for a multiplier, the activities should receive an increased multiplier of up to four times their quantified dollar value. A bank may request a determination that an activity is eligible for an increased multiplier as part of the qualifying activity confirmation process or during a CRA evaluation. In addition to multipliers that may apply to these activities, the impact of these activities to the LMI community and other identified areas of need will be considered as part of performance context.

One industry commenter expressed concern that, in their view, purchases of mortgage-backed securities (MBS) are effectively disfavored under the proposal because they do not receive the benefit of a multiplier. The commenter noted that MBS provide a significant source of liquidity to the mortgage market by enabling banks to make additional loans and that MBS are a tool used by state housing finance agencies to provide opportunities for LMI borrowers to purchase first homes. The agency agrees with the commenter—MBS play an important role in the mortgage market, particularly with respect to liquidity in the financial marketplace. The absence of a multiplier for MBS should not be interpreted as an expression of disfavor. However, in the context of CRA, the agency believes that other activities are more impactful to a bank's community and it is these activities that the agency sought to encourage by applying a multiplier. The final rule continues to balance these considerations by

[82] Commenters also suggested recalibration of multipliers including a regular public feedback process.

[83] Recommendations included increasing multipliers for (1) capital investments in CDFIs and minority depository institutions, women's depository institutions, or low-income credit unions; (2) donations and grants; (3) CD services; and (4) other activities that support CDFIs and affordable-housing related CD loans.

[84] Commenters suggested adding additional multipliers for (1) small dollar loan programs; (2) mortgage loans to LMI borrowers; (3) other housing-related activities, such as first-time homebuyer loans; and (4) activities involving housing finance agencies.

including MBS as a qualifying activity but excluding them from the multiplier provisions. Other than the changes described above, the agency is adopting the multipliers as proposed.

Qualifying activities value, calculation. Under the final rule, a bank would calculate its qualifying activities value and assessment area qualifying activities values by taking the sum of the quantified dollar value of all qualifying activities, adjusted by any applicable multiplier, as follows:

$$\begin{array}{c}\textit{Quantified value of } \textbf{CD loans and Retail Loans} \\ \textit{on balance sheet for at least } 365 \textit{ days, and} \\ \textbf{CD Investments} \textit{ on balance sheet}\end{array} + \begin{array}{c}\textit{One hundred percent of the orignation} \\ \textit{value of } \textbf{Retail Loans} \\ \textit{sold within} \\ 365 \textit{ days of origination}\end{array} + \begin{array}{c}\textbf{CD Services, Monetary Donations,} \\ \textit{and, } \textbf{in} - \textbf{kind donations}\end{array}$$

Conforming, clarifying, and technical changes. Other than the changes explained above, the agency also made conforming, clarifying, and technical changes throughout the final rule to reflect the changes to the qualifying activities-related definitions, qualifying activities criteria, CRA illustrative list and confirmation process, qualifying activities quantification, and qualifying activities value and to clarify these provisions.

B. Assessment Areas

Overview. The CRA directs the agency to encourage banks to engage in CRA activities in areas where they draw resources by collecting deposits. When the regulations were last significantly revised in 1995, bank branches closely reflected the distribution of a bank's deposits and were the primary means of delivering products and services to bank customers. By focusing assessment areas on branches where deposits are collected, the current regulation helped to ensure that banks reinvested capital and credit in the communities from which they drew resources and avoided the primary policy concern of banks taking deposits from one community and lending that capital in another, perhaps more profitable or affluent, community.

Further, the existing means of delineating assessment areas works well for most traditional banks that operate and collect deposits through their physical deposit-taking locations. The current system does not, however, account for the advent of internet banks and other banks that collect significant portions of their deposits outside of their current assessment areas. As a result, there is a gap between the way assessment areas are delineated under the current framework and where some banks receive the majority of their deposits.

To close the gap, the proposal would have required banks that collect a large portion of their deposits outside their assessment areas to delineate additional, non-overlapping deposit-based assessment areas where they draw large amounts of deposits. The proposal also retained the current regulation's requirement that banks delineate assessment areas that include their physical deposit-taking locations (*i.e.,* facility-based assessment areas), thus preserving the importance of branches. The inclusion of both facility-based and deposit-based assessment areas in the proposal reflected the agency's policy determination that banks should be required to meet the needs of their communities where they have branches, where they receive deposits, and where their customers are located.

The agency grounded this policy decision on its understanding and observations of the industry and supervisory experience. The OCC relied primarily on its regulatory understanding and observations of the industry, and supervisory experience to inform its regulatory judgment because deposit data today is incomplete and not reported in a manner that provides depositors' locations. The current data limitations make it impossible to ascertain the volume of deposits from depositors' geographic locations. The agency's proposal with respect to assessment areas received many comments. The OCC's responses to these comments are set forth in the sections below.

Facility-based assessment areas, delineation. The proposal would have required banks to delineate a facility-based assessment area anywhere it had its main office, a branch, or a non-branch deposit-taking facility, as well as the surrounding areas where the bank had originated or purchased a substantial portion of its qualifying retail loans. These facility-based assessment areas would have ensured that CRA activity continued to have a local community focus where banks maintained a physical presence and conducted a substantial portion of their lending activity.

Several industry and community group commenters stated that branches, particularly full-service ones, are important and should not be devalued in delineating assessment areas. Some industry commenters stated that the proposal's requirement that banks delineate a facility-based assessment area around deposit-taking automated teller machines (ATM) is outdated because customers can now use their smartphones and other technologies to make deposits. Some of these commenters suggested that banks should instead have the option of delineating an assessment area around deposit-taking ATMs, but not be required to do so. Similarly, one advocacy group suggested that a bank should not be required to create a facility-based assessment area in an area with only deposit-taking ATMs and no branches if the deposits in that area are 2.5 percent or less of the bank's total retail domestic deposits.

The OCC recognizes the importance of branches and believes that the proposal appropriately accounted for them in the assessment area context. In the final rule, the OCC retains the requirement to delineate facility-based assessment areas around banks' physical deposit-taking locations, including full-service branches. However, the agency agrees with concerns expressed by commenters about the delineation of assessment areas around deposit-taking ATMS. In the agency's examination experience, deposit-taking ATMs are often in the same area as a branch that would also require the delineation of an assessment area. If a deposit-taking ATM is the only means by which the bank is drawing deposits, it is likely to be a very minor amount of retail domestic deposits. This would make the assessment area delineation costly, with limited utility, because the CRA framework generally incentivizes banks to engage in CRA activities commensurate with deposits. Therefore, in the final rule, banks may, but are not required to, delineate assessment areas around deposit-taking ATMs.[85]

[85] The agency acknowledges that the statute requires it to produce written evaluations that will continue to state the agency's CRA conclusions and contain facts and data supporting those conclusions for each metropolitan area and nonmetropolitan area of a state containing a deposit-taking facility, including deposit-taking ATMs, consistent with the CRA statute. 12 U.S.C. 2906(b)(1)(B), (d)(3)(A), (e)(1). The data collection and recordkeeping requirements of the final rule, as well as CRA evaluations, will provide examiners with enough facts and data upon which to draw a conclusion in the metropolitan areas containing a deposit-taking

Some industry commenters asked for clarity on how substantial portion of lending activity is defined. The final rule requires that banks' facility-based assessment areas include locations surrounding the deposit-taking facilities where they originate or purchase a substantial portion of their qualifying retail loans. This is based on the current framework's assessment area delineation requirements, and the agency intends to interpret this concept consistent with its current treatment. Further, the final rule retains the statement that a bank's assessment areas must not reflect illegal discrimination or arbitrarily exclude LMI census tracts, taking into account the bank's size and financial condition.

Deposit-based assessment area, delineation. The proposal also would have required that banks that received more than 50 percent of their retail domestic deposits from outside of their facility-based assessment areas (50 percent threshold) delineate separate deposit-based assessment areas in the smallest geographic area from which they received five percent or more of their retail domestic deposits (five percent threshold). These deposit-based assessment areas were intended to ensure the CRA regulation keeps pace with the evolution of modern banking (including the emergence of internet banks and other banks whose business models generate deposits from areas not tied to their physical location), consistent with the CRA's purpose to ensure that banks help meet credit needs where they collect deposits.

Some industry commenters suggested that using a bank's concentration of deposits to determine where it delineated additional assessment areas would lead banks to engage in unsafe or unsound activities by requiring them to lend and invest in areas where they have no physical presence. Similarly, some expressed their view that banks may be at a disadvantage serving deposit-based assessment areas as compared to banks with physical locations in those areas because of a lack of knowledge of community needs and opportunities and that banks would not be able to serve their deposit-based assessment areas as well as their facility-based assessment areas. Industry commenters also stated that it would be burdensome to gain knowledge of deposit-based assessment areas' community needs and opportunities. Other industry commenters expressed their belief that banks may struggle to achieve the level of CD lending and investment needed to receive an outstanding or satisfactory in their deposit-based assessment areas, especially because the proposal required a bank to delineate deposit-based assessment areas at the smallest geographical areas from which it received five percent of its deposits.

The agency carefully considered these comments and believes that the proposal's use of deposit-based assessment areas will not lead to unsafe or unsound activities for several reasons. First, as specifically stated in the proposal, the regulation would not require banks to engage in any activities that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates that banks can meet the standards in the proposal with safe and sound loans, investments, and services on which the banks expect to make a profit. Second, once a deposit relationship is established, banks usually build upon the relationship to establish other customer relationships and offer other products to the depositors. The proposal's five percent threshold was high enough to ensure that a bank would only be required to delineate an assessment area if it received a significant amount of retail domestic deposits from that area, which would indicate that the bank had familiarity with the market because of relationships the bank is building with these depositors.

However, the agency acknowledges that the lack of a physical presence in a bank's deposit-based assessment areas may present some difficulties, especially with respect to engaging in the level of CD activity required to receive a satisfactory or outstanding rating. To provide banks with additional flexibility, the final rule allows a bank to delineate its deposit-based assessment areas at any geographical level up to the state level, including at the metropolitan divisions, MSA, or non-MSA level, instead of requiring it to delineate at the smallest geographical area where it has a five percent concentration of its retail domestic deposits, provided the deposit-based assessment areas do not overlap facility-based assessment areas. This change will provide banks with additional flexibility to engage in safe and sound activities in a broader geographic area that includes the area from which the bank is receiving the five percent concentration of retail domestic deposits. Moreover, it will allow banks to receive assessment area credit for qualifying activities in more rural or underserved areas where banks generally do not gather deposits in a significant enough amount to warrant delineating additional deposit-based assessment areas, thereby providing additional incentives to engage in activities that benefit these areas.

However, commenters suggested a variety of different methods for delineating assessment areas beyond physical bank locations based on their favored policy outcomes. Some commenters proposed lending-based assessment areas, while others proposed assessment areas determined by a combination of lending activity and the location of deposits. Other commenters argued that the proposal's assessment area framework should require a bank to delineate assessment areas where it engages in a significant amount of lending or where it receives a substantial portion of its deposits, even if more than 50 percent of its deposits come from inside its assessment areas. Commenters also suggested that assessment areas should capture the great majority of a bank's business, including lending activity, by potentially looking to the bank's marketing and advertising.

In addition to proposing that the assessment area delineation requirements incorporate lending, commenters suggested that banks should delineate deposit-based assessment areas based on banks' market share of deposits in an area or the number of deposit accounts, instead of on the distribution of the volume of banks' own deposits. Others suggested that assessment areas should focus on where community credit needs are greatest.

While some commenters asked for the assessment area reforms to apply to all banks, other commenters advocated for the method of delineating additional assessment areas to be tailored to the type of bank. Some industry commenters asked for the option of new assessment areas around banks' affiliates.

This addition of deposit-based assessment areas was intended to further the purposes of the CRA statute and ensure that the CRA regulations keep pace with the changes the agency has observed in the banking industry in recent years. The OCC has observed an increase in the number of internet banks and the use of internet platforms for collecting deposits, making deposit-based assessment areas increasingly relevant. Additionally, by allowing banks to receive credit for qualifying activities outside of a bank's assessment areas and using a CRA evaluation measure based on a bank's total retail domestic deposits (not just the amount of retail domestic deposits in an assessment area), the proposal would

ATM, even if a bank chooses not to delineate an assessment area there.

have incentivized banks to conduct CRA qualifying activities outside of their assessment areas.

Further, instead of seeking to define non-traditional business models or to exempt or tailor deposit-based assessment area delineation requirements for different bank business models, the agency used a percentage of retail domestic deposits received from areas outside of a bank's facility-based assessment areas as a trigger for delineating deposit-based assessment areas. Specifically, the 50 percent threshold is designed to ensure that the regulation addresses those banks that receive a significant volume of retail domestic deposits from areas outside of their branch network. The 50 percent threshold provides flexibility to address the banking industry as it evolves (*e.g.,* traditional banks may increase their reliance on technology to generate deposits in areas outside of their traditional branch footprint). In addition to being flexible enough to capture the evolving nature of banking, the proposed deposit-based assessment area delineation requirements also are adaptable to different business models.

Finally, commenters voiced some concerns about the potential for negative incentives under a deposit-based assessment area framework. For example, commenters stated that the framework would have incentivized banks to chase large-dollar depositors. The OCC disagrees with this assertion. The agency's goal in adding deposit-based assessment areas was to incentivize banks to meet the needs of their customers that are located outside of their facility-based assessment areas.

Some commenters suggested that the proposal's deposit-based assessment areas would exacerbate credit deserts. Commenters also stated that the deposit-based assessment area concept would focus CRA activities in population centers that are typically already well-served by banks, thereby reinforcing—not reducing—the CRA hot spot problem. Some of these commenters voiced concerns that deposit-based assessment areas (and therefore CRA hotspots) would be created in affluent areas instead of in LMI communities, rural areas, Indian country, and other underserved areas because of the concentration of deposits. Two industry commenters specifically noted the inclusion of custody banks and corporate deposits as reasons for the potential exacerbation of CRA hot spots. However, one community group stated that deposit-based assessment areas would mitigate CRA hot spots.[86] Industry commenters also criticized the proposal's deposit-based assessment area framework as inflexible and suggested it would prevent banks from offering services to communities. They stated that the proposal would not result in additional banking services in rural areas, distressed areas, Indian country, and other CRA deserts because these areas would be highly unlikely to be deposit-based assessment areas as defined by the proposal.

The agency agrees that it is important to encourage activities in credit deserts and minimize artificial CRA hot spots.[87] But contrary to what commenters have stated, the agency believes that the framework of the proposal, including deposit-based assessment areas, would have incentivized bank activity in LMI census tracts and other identified areas of need, especially in response to the COVID–19 pandemic. The proposal would have mitigated artificial hot spots and direct CRA activity to areas from which banks receive deposits in three ways. First, the proposal would have given banks CRA credit for activities conducted in underserved and distressed areas, disaster areas, and Indian country anywhere in the country. Second, the agency notes that many commenters appear to have misunderstood the purpose of assessment areas and how the proposal would have worked. The proposal's assessment area framework, including deposit-based assessment areas, would have been a mechanism of ensuring banks are serving the communities in which they and their customers are located and not a device to limit where banks would have been able to receive CRA credit. Because the proposal required a bank that met the 50 percent threshold to delineate deposit-based assessment areas, those banks would be evaluated on whether they conducted activities in other areas of the country outside of their facility-based assessment areas, where their depositors actually reside.[88]

Third, because a bank's CRA evaluation measure in any given assessment area would have been a portion of the volume of retail domestic deposits a bank received from that area, artificial CRA hot spots would have been reduced. To the extent that the proposed framework focused banks' CRA obligations on areas where they receive a larger volume of deposits, this is consistent with CRA's statutory purpose to ensure banks meet the credit needs of the communities where they collect deposits. However, to further mitigate the concern that deposit-based assessment areas would create new CRA hot spots, the agency is amending the proposal to add flexibility. The final rule allows a bank to delineate its deposit-based assessment areas at any geographical area up to the state level.

The agency recognizes that the proposal's method of delineating assessment areas did not, by itself, address the problem of CRA deserts. However, the agency does not believe further revisions to the proposed assessment area provisions are appropriate; instead, the agency agrees with commenters who suggested that additional incentives, such as multipliers, would encourage lending and investment in CRA deserts and have made this change in the final rule. Additionally, the agency notes that the proposal would have allowed banks to receive CRA credit in the bank's CRA evaluation measure for loans to LMI borrowers, regardless of location, and for CD activities conducted in distressed and underserved areas, regardless of whether those areas are in a bank's assessment area. Under the proposal, because a bank's CRA evaluation measure is based on its total retail domestic deposits, and not just its retail domestic deposits in its assessment areas, banks would be incentivized to conduct qualifying activities in areas outside of their assessment area, including in underserved and rural areas. The OCC does not believe the comments necessitated changes to the proposed assessment area provisions. Although the agency carefully considered commenters' concerns and suggestions, the final rule retains the deposit-based assessment area framework because it aligns more closely with the statutory purpose of the CRA.

[86] *See* Enterprise Community Partners, Inc., from P. Almodovar, at XX (Apr. 20, 2020). (''The proposed rule offers greater flexibility to banks to designate state-wide non-metropolitan [assessment areas]. This could be particularly beneficial for rural areas and may mitigate some of the problems of CRA deserts.''

[87] The current CRA regulations allow artificial CRA hot spots to develop by only allowing banks to delineate assessment areas around their physical deposit-taking locations. Since banks generally only get CRA credit for activities around their physical deposit-taking locations, including their main office, and banks may locate their main office in certain geographies for reasons unrelated to their concentration of depositors in those geographies, artificial CRA hot spots are created.

[88] This is particularly the case for internet banks, which under the current framework only receive credit for CRA activities conducted around their main offices.

Thresholds for deposit-based assessment areas. The proposal included two thresholds for delineating deposit-based assessment areas: (1) The five percent threshold; and (2) the 50 percent threshold. Some community group and industry commenters argued that the proposal's deposit-based assessment areas framework was not based on data and, therefore, analysis of it was impossible. These commenters noted that it was difficult to assess whether the five and 50 percent thresholds are appropriate, given the limited nature of existing data. Commenters encouraged the agency to conduct further testing and to further consider potential consequences before calibrating the thresholds.

With regard to the 50 percent threshold, some community group commenters remarked that the 50 percent threshold was too high and recommended eliminating it and simply delineating assessment areas where banks have five percent or more of deposits in a geographic area, such as an MSA. Other commenters suggested that the 50 percent threshold would have excluded areas where banks have only a small portion of their total retail domestic deposits but a large market share, such as rural counties and smaller cities. To ensure that more large banks have assessment areas in underserved communities, these commenters suggested lowering the thresholds for all banks or for large banks or using a market share threshold of five percent. Alternatively, other industry commenters thought that the 50 percent threshold was too low and should be higher to capture only true internet banks.

Regarding the five percent threshold, commenters had a variety of opinions. Some industry commenters thought that the five percent threshold was too low and suggested it be increased, possibly to 15 percent, to ensure that banks are only required to delineate deposit-based assessment areas where they engage in a meaningful volume of activity. In contrast, some community group commenters believed that the threshold was too high and expressed the concern that few, if any MSAs, would meet the five percent threshold.

The OCC acknowledges that there are limited data on deposits because the current reporting framework attributes deposits to a branch location,[89] rather than the account holder's address, and uses a definition of deposits different than the proposed definition of deposits. Additionally, not all banks geocode deposits by customer address. Accordingly, the OCC was unable to estimate the number of deposit-based assessment areas that banks would be required to delineate under the proposed framework. However, despite these limitations, given the importance of the CRA and the agency's policy of ensuring that banks engage in CRA activities in communities where they receive deposits, consistent with the CRA statute, the OCC believes it is appropriate to rely on its experience, knowledge of the banking system, and supervisory judgment to establish initial thresholds. The thresholds in the final rule reflect the agency's supervisory experience. Specifically, the thresholds were set high enough to ensure that internet banks would have an obligation to engage in CRA activities in those communities where these banks would be familiar enough with the area, based on the banks' concentration of deposits, to engage in lending, investment, and other activities in a safe and sound manner.[90] In the OCC's expert judgment, these thresholds are set at levels that would address the current use of technology in the banking industry and anticipate a future in which banks may increasingly leverage technology to generate deposits outside of their primary markets without overburdening banks with numerous small assessment areas. Furthermore, the proposed thresholds are sufficiently high to give the OCC confidence that, based on its supervisory experience and knowledge of the banking industry, traditional branch-based banks are unlikely to be required to designate additional deposit-based assessment areas in the near or medium term. Therefore, the final rule adopts the 50 percent and five percent thresholds as proposed.

Some industry commenters voiced concern that the frequency of changes in deposit levels that may cause banks to be over the threshold one quarter and below the next, particularly with quarterly reporting, and requested clarity about how to handle shifting deposit levels. On a similar note, some community groups voiced that deposit-based assessment areas were not transparent because they would not know banks' delineated assessment areas until after CRA examinations are complete due to the changing nature of depositors' locations. One solution that was suggested by industry commenters was to require delineation only after deposit levels in an area remain above the thresholds for one or two years. For the reasons discussed above, the OCC concludes that the five percent threshold is appropriate, but it acknowledges that deposit levels fluctuate. Although the agency does not believe that quarterly fluctuations in retail domestic deposits should obviate a bank's obligations to a community, the agency believes it is appropriate to allow banks to change their assessment area delineations if their level of retail domestic deposits falls below five percent for a longer period of time. For this reason and others discussed below, the final rule will permit banks to change their assessment area delineations once a year.

Outside of assessment area qualifying activities. The proposal included all qualifying activities conducted by a bank in the calculation of the bank's CRA evaluation measure. The proposal would not, however, have permitted a bank to receive a satisfactory or outstanding bank presumptive CRA rating unless the bank received a satisfactory or outstanding rating in a significant portion of its assessment areas that accounted for a significant amount of the bank's retail domestic deposits.

Many community group and industry commenters expressed support for banks conducting qualifying activities outside of their assessment areas. However, one commenter questioned whether providing CRA credit for activities outside of assessment areas was contrary to legislative intent. Some commenters advocated for providing more weight or credit for activities conducted within a bank's assessment areas than activities outside of assessment areas. Others recommended requiring banks to first meet a level of performance or make reasonable efforts

[89] The current framework relies on FDIC Summary of Deposits (SOD) data, which instruct banks to assign deposits to each office in a manner consistent with their existing internal record-keeping practices. FDIC SOD Instructions, June 30, 2019, retrieved Apr. 30, 2020, available at *https://www.fdic.gov/regulations/resources/call/sod-reporting-instructions.pdf.*

[90] Some commenters stated that the deposit-based assessment areas would require banks to engage in activities in areas that they may be unfamiliar with and that this could create safety and soundness problems. A core component of the OCC's mission is to ensure that national banks and federal savings associations operate in a safe and sound manner. In the OCC's expert judgment, deposit-based assessment areas will not result in unsafe or unsound activities. To receive a satisfactory or an outstanding CRA rating in a deposit-based assessment area under the final rule, banks are required to engage in qualifying activities that are commensurate with the volume of deposits they receive from that assessment area. This level of activity will not result in an outsized risk to capital. Moreover, given both the five and 50 percent thresholds, any deposit-based assessment area would include a sizeable portion of a bank's retail domestic deposits gathered from depositors located outside of the bank's facility-based assessment areas with whom the bank has preexisting relationships. These relationships will give the bank insight into the lending needs of the area.

to meet needs inside assessment areas before receiving credit for activities outside assessment areas. Some community group commenters proposed that instead of using deposit-based assessment areas, the OCC should consider allowing deposits received via the internet to be considered as being received from a cyber community rather than a geography and to allow the obligations based on these cyber deposits to be fulfilled by qualifying activities conducted elsewhere.

The OCC recognizes the concerns associated with providing credit for outside-of-assessment area activities and believes that the proposal appropriately addresses these concerns. The CRA evaluation measure takes into account all of a bank's qualifying activities, including activities outside of a bank's assessment areas, while the assessment area CRA evaluation measure ensures that adequate qualifying activities are conducted within banks' assessment areas to satisfy local needs. By accounting for qualifying activities wherever they are conducted, the CRA evaluation measure functions similar to the suggestion for a cyber community. Further, while in many instances, assessment areas capture most of a bank's community, the bank may collect deposits from areas outside of assessment areas (both facility- and deposit-based). Thus, providing credit for activities outside of assessment areas allows banks to serve their entire community, resulting in the fulfillment—not the contravention—of the statutory purpose of the CRA. Accordingly, the OCC did not adopt any of the commenters' suggestions in the final rule.

Changes to assessment area delineations. The proposal generally allowed a bank to change its assessment area delineations once during each evaluation period but specified that banks must not change their assessment area delineations within the annual period used to determine an assessment area CRA evaluation measure. Some commenters stated that the relative infrequency with which banks may update their assessment area delineations under the proposal had the effect of limiting growth and expansion. The OCC notes that the proposal accounted for expansion by also allowing banks to change their assessment area delineations pursuant to an approved application for a merger or consolidation. Nevertheless, to allow banks additional flexibility to account for other changes in branching strategies or depositor concentrations, the final rule permits a bank the option to change its assessment area delineations once a year.

Size of assessment area delineations. The proposal would have required that banks' assessment areas be at least a whole county or county equivalent, unlike the current framework which provides that banks may include only the portion of a political subdivision, such as a county, that it reasonably can be expected to serve. Some commenters expressed concern that, under the proposal, assessment areas could be no smaller than a county or county equivalent because some counties are quite large and represent geographic areas that may be unreasonable for some banks to serve. Other commenters asked the OCC to clarify that, even with county-level assessment areas, banks would not be penalized for lending, investing, and conducting services in only a portion of a county as long as the banks' activities did not reflect illegal discrimination or the exclusion of LMI areas. Some commenters expressed concerns about the burden of collecting data at the census tract level and asked that assessment areas be defined at the county level.

The OCC acknowledges commenters' concerns regarding the minimum size of assessment areas. The proposal set the county or county equivalent level as the minimum size of an assessment area to improve transparency and improve the ability to compare CRA performance across banks. Further, based upon the OCC's observations and experience, permitting banks to delineate assessment areas below the county level has produced some anomalous results where banks delineate just a few relatively small census tracts as their branches as an assessment area when their lending activity indicates that they can and do serve larger geographic areas. The agency's intent was not to impose restrictions on the size of assessment areas that would negatively impact banks. If a bank delineated its assessment area at the county level but was unable to effectively serve the entire county the agency would consider the bank's presence in the market and its competitive position as part of performance context in determining the bank's assigned rating. After considering the benefits of limiting assessment area delineations to the county or county equivalent level and the ability to account for commenters' concerns through performance context, the agency is adopting the assessment area size limitation as proposed.

Other commenters remarked that by abandoning the concept of the broader statewide or regional area that serves a bank's assessment area as set forth in the current regulation, a bank could no longer obtain assessment area-level CRA credit for CD projects in that broader area. The OCC appreciated this concern when drafting the proposal and provided a method for determining activity location that allows a bank to allocate credit for CD activities that serve a larger area to assessment areas within the larger area served by the activity. Specifically, the final rule allows banks to allocate credit for CD activities: (1) To an assessment area within a broader area served by an activity if the bank can document that the services or funding it provided was allocated to a particular project that is in or that serves the assessment area; or (2) across all of the areas served by the activity, including any assessment areas if that cannot be documented.[91] The OCC also recognized that, for deposit-based assessment areas, banks should have additional flexibility to receive credit for retail and CD activities that serve a larger area than the smallest geographic area where the bank gathers at least five percent of its retail domestic deposits. Accordingly, the final rule will provide banks with the option of delineating deposit-based assessment areas at the state level. For these reasons, the OCC concludes that it is not necessary to retain credit for qualifying activities in the broader statewide or regional area that contains a bank's assessment area.

Non-branch deposit-taking facility. The proposal defined non-branch deposit-taking facility as a banking facility other than a branch owned or operated by, or operated exclusively for, the bank that is authorized to take deposits that is located in any state or territory of the United States of America. Some industry commenters requested that the OCC clarify what constitutes a non-branch deposit-taking facility. These commenters proposed a variety of potential definitions for the term. Some advocated limiting the term to cover facilities that are authorized to take consumer deposits, rather than all deposits generally. Others requested eliminating the requirement that the facility be automated and unstaffed because that requirement creates confusion as to whether a piece of equipment, such as a banker's mobile phone or a computer tablet used by a customer to make a deposit online, would be construed as creating a non-branch deposit-taking facility.

[91] As part of its ongoing administration of the rule, the OCC plans to issue guidance, as needed, to explain or clarify the method for the allocation process described in the final rule.

Following consideration of these comments, the OCC revised the definition of non-branch deposit-taking facility in the final rule to clarify that these facilities must be available to the general public. As such, facilities that are for personal use or are located in an area that is not available to the general public do not meet the definition of non-branch deposit-taking facility. The definition of non-branch deposit-taking facility is otherwise adopted as proposed. The agency is also clarifying that the definition of non-branch deposit-taking facility as proposed and in the final rule does not include the terms automated or unstaffed.[92]

Finally, one community group commenter requested that the OCC clarify that the term maintains means that the bank has a permanent or semi-permanent branch or non-branch deposit-taking facility at the physical location. The OCC will address questions of this sort, about the particular application of the rule to a specific set of factual circumstances, through interpretation and guidance as part of the agency's ongoing administration of the rule, as is done today. Other than the changes described above, the OCC is adopting the definition of non-branch deposit-taking facility as proposed.

Retail domestic deposits. The proposal would have defined retail domestic deposits used for purposes of delineating assessment areas and in the general performance standards as the total domestic deposits of individuals, partnerships, and corporations, as reported on Schedule RC–E, item 1, of the Call Report, excluding brokered deposits.[93] This Call Report item excludes municipal deposits and deposits from foreign governments or entities.

Commenters suggested several changes to the proposed definition of retail domestic deposits. Community group commenters argued that retail domestic deposits should not exclude municipal deposits because they are a form of community wealth (derived from taxes and fees on residents) and reflect the resources of actual and potential bank customers.

Industry commenters suggested that retail domestic deposits should be defined as deposits intended primarily for personal, household, or family use rather than as proposed, which would have included deposits of individuals, partnerships, and corporations. Industry commenters argued that their suggested definition would more accurately represent a bank's capacity to engage in qualifying activities for the benefit of individuals, small businesses, and small farms.[94] Other industry commenters suggested that, in addition to brokered deposits, other types of deposits should be excluded from the rules' definition of retail domestic deposits including corporate deposits,[95] sweep deposits,[96] non-brokered reciprocal deposits,[97] health savings accounts (HSAs),[98] listed deposits,[99] and prepaid card funding.[100]

The OCC has carefully considered the comments received and adopted a few suggested changes. The agency determined that using deposits intended primarily for personal, household, or family use (RC–E, items 6a, 6b, 7a(1), 7b(1)) would be too narrow and underrepresents a bank's capacity to engage in qualifying activities. Further, there are no unique features of listed deposits that justify their exclusion from the definition of retail domestic deposits.[101] Similarly, the OCC concludes that permitting a full exclusion of non-brokered reciprocal deposits, as suggested by commenters, would not be adequately tailored to address the concerns raised.[102] Instead, the final rule requires that any deposit amount that is *sent* to another institution through a reciprocal arrangement must be included in the sending bank's measure of retail domestic deposits and assigned to the appropriate assessment area. Reciprocal deposits *received* from another bank do not need to be included in the calculation of a bank's retail domestic deposits. This treatment addresses commenters' concerns and avoids any double counting of deposits.

Consistent with the proposal, the final rule defines retail domestic deposits as the deposits of individuals, partnerships, and corporations reported in the Call Report as RC–E, item 1. In addition, the final rule clarifies that retail domestic deposits include sent, but not received, non-brokered reciprocal deposits, listed deposits, and municipal deposits. The final rule states that banks may exclude prepaid card funding, HSA deposits, sweep deposits, and brokered deposits from their retail domestic deposits. In the OCC's view, the modified definition of retail domestic deposits better reflects the

[92] In the final rule, the term ATM also does not include a requirement that the facility be unstaffed.

[93] In response to a comment requesting clarification, the OCC notes that the final rule's exclusion of brokered deposits from the definition of retail domestic deposits does not reflect a value judgment regarding brokered deposits. As stated in the proposed rule, brokered deposits were excluded from the definition of retail domestic deposits because they are not associated with any individual or community.

[94] These commenters noted that their suggested definition, which is captured on Call Report Schedule RC–E, items 6a, 6b, 7a(1), and 7b(1), is currently not required to be reported for banks with $1 billion or less in assets. As a result, these commenters suggest that if their definition is adopted, the rule should exempt banks with $1 billion or less in assets from the general performance standards and the delineation of deposit-based assessment areas.

[95] Commenters argued that these deposits should be excluded because they fluctuate greatly and unpredictably.

[96] Commenters urged the exclusion of sweep deposits (that are not considered brokered) from the definition of retail domestic deposits because they are not associated with particular communities. Commenters noted that sweep deposits are from transactions that move cash overnight from a brokerage account at a broker-dealer into an FDIC insured deposit account.

[97] Commenters suggested the exclusion of non-brokered reciprocal deposits because the bank receiving these deposits does not know the identity or location of the underlying beneficial owners and banks that receive non-brokered reciprocal deposits ordinarily have no relationship with the individual or community from which a reciprocal deposit originates. Commenters also noted that community banks are ill-equipped to bear such long-distance compliance burdens and that these deposits may trigger the creation of additional assessment areas for minority depository institution and CDFIs in high income geographies that are in less need of CRA activity.

[98] Commenters argued that HSA account deposits should be excluded because banks do not have control over the geographic distribution of HSA deposits. HSAs are owned by account holders, and banks do not necessarily maintain a direct relationship with these account holders.

[99] Commenters suggested excluding listed deposits because the associated depositors are not necessarily tied to the community in which the bank maintains a market footprint. These depositors tend to use listing services to find the best rate available for a given deposit type and, in the case of a certificate of deposit, term.

[100] Commenters urged the exclusion of prepaid card funding because prepaid cards do not have an address associated with the purchaser or end user.

[101] Listing services are, in effect, a form of advertising, just as a depositor might find information on a bank's own website or a website that makes a bank's deposit rates available to the public without the bank's authorization. Many factors distinguish deposits received via a listing service from brokered deposits including: (1) The listing service does not place the deposits with a bank; (2) the listing service is compensated solely by subscription fees, which are paid either by the subscriber or by the banks whose rates are being listed; (3) if the fees are paid by the bank, the fee is not a function of the estimated dollar amount of the deposits raised from the listing; and (4) the listing service may not steer funds to a specific institution. Given these differences from brokered deposits, listed deposits that are included in Call Report Schedule RC–E, line 1 are included in the definition of retail domestic deposits.

[102] In a reciprocal deposit network, banks act as agents placing deposits at other banks in the network. The amounts sent out by a bank exactly match the amounts received from the bank. Within the network, each bank that directly accepts a deposit from a depositor can obtain the address of the depositor whose deposit is parceled out to other banks. The bank that receives deposits directly from depositors also knows the total amount of those deposits (*i.e.,* the portion retained by the bank, and the portion that the other receiving banks have received). In contrast, the banks that receive the deposits from another bank in a network have no ongoing relationship with the depositor (or the community where that depositor lives).

capacity of a bank and the resources it could appropriately use to engage in CRA activities. The agency adopts the proposed definition of retail domestic deposits with the changes described herein.

Finally, two industry commenters asked how the FDIC's brokered deposit rulemaking could impact the proposed definition of retail domestic deposits for CRA purposes. Because the FDIC has not yet finalized its rulemaking on brokered deposits,[103] the OCC determines that it is not appropriate to make changes to the final rule based on potential future changes. The agency will continue to monitor and consider any impacts the FDIC's changes may have on the CRA regulations and provide additional guidance or propose changes to its rules, as needed.

Other issues raised. Commenters raised questions about specific issues, such as how geographic units should be clustered to receive credit for the deposit-based assessment area thresholds, how brokered deposits should be calculated, and what measures the agency will put in place to ensure accurate reporting of deposit-based assessment area delineations. The OCC plans to issue guidance to address these more specific issues relating to the application of the rule, as appropriate.

Conforming changes. The agency made conforming changes throughout the final rule to reflect the changes related to the assessment area provisions and related definitions but is otherwise adopting these provisions as proposed.

C. Objective Method To Measure CRA Performance

Overview. As described above, the current CRA regulatory framework provides a framework for examiners to use their judgment in assessing performance criteria and assigning ratings. Under the current framework, ratings may not always correlate with the amount or value of CRA activity that banks conduct and may vary from bank to bank, even if those banks engaged in a similar volume of comparable activities.

Without a clear method to quantify their observations, examiners have developed a variety of more objective approaches that they use to assess performance and assign ratings. While these processes vary, they all consider two attributes of a bank's CRA activity—the *distribution* and the *impact* of CRA activity. When measuring distributions today, examiners evaluate the geographic and borrower distribution of a bank's retail lending activity using retail lending distribution tests. When measuring impact today, examiners measure and assess the dollar value of a bank's CD lending and investment and the level of retail lending activities. Examiners also consider qualitative factors that are more difficult to quantify such as retail banking services and CD services and the responsiveness, innovativeness, and complexity of a bank's activities.

The proposal built upon current practices to provide more objective and consistent means of evaluating the distribution of the number of qualifying activities (*e.g.,* units) and the impact (*e.g.,* dollar value) of the activities. The proposal did so in three ways. First, the proposal would have included almost the same tests used for evaluating retail loan distribution under the current framework but would have added clarity by describing the tests and including objective thresholds. Second, the proposal would have assessed the impact of all of a bank's CRA's activities, as opposed to focusing on CD loans and investments, as is done under the current framework. Assessing all activities would give a more complete picture of the *impact* or dollar value of a bank's CRA activity. Finally, the proposal would have provided a mechanism for consistent consideration of the more qualitative attributes of CRA activity by including a set of regulatory factors for evaluating performance context.

Performance standards in general. The proposal set out general performance standards to provide a more objective method of assessing CRA performance. These general performance standards would have evaluated banks' CRA activities in an assessment area by assessing: (1) The distribution of the number of qualifying retail loans to LMI individuals, CRA-eligible farms, CRA-eligible businesses, and LMI geographies in a community as measured through the retail lending distribution tests;[104] (2) whether the quantified dollar value of a bank's qualifying activities met specific ratings thresholds;[105] and (3) whether the bank engaged in a specified minimum level of CD lending and investments. The bank performance standards would have evaluated banks' CRA activities throughout the country by assessing: (1) The rating a bank received in a significant portion of its assessment areas and in assessment areas representing a significant portion of its deposits; (2) the impact of a bank's qualifying activities; and (3) whether the bank engaged in a minimum level of CD lending and investments.

The proposal also would have retained the qualitative considerations that apply under the current framework for important factors that are difficult to quantify, such as responsiveness, complexity, and innovativeness. The proposal would have introduced standards for the consideration of performance context to enable the OCC to recognize and account for specific facts and circumstances relating to a bank's CRA capacity and opportunities in a transparent manner.

The proposal allowed small banks to opt into the general performance standards; those small banks that chose not to opt in would be evaluated under small bank performance standards consistent with the current regulations.[106] The proposal also continued to give all banks the option to be evaluated under a strategic plan. Unlike the current framework, the proposal did not include separate performance standards for intermediate small banks or for wholesale or limited purpose banks.

Although many commenters agreed that the current CRA framework should be reformed, they disagreed with specific elements of the proposal or had alternative suggestions for specific reforms. These differences simply reflect different policy preferences. For

[103] *See* Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 FR 7453 (Feb. 10, 2020).

[104] The distribution component would have been the same method the agency uses to assess retail lending today. The only change in the proposal was based on ideas shared with the agencies by the Board. These ideas provide a quantifiable method for determining if a bank's portion of major retail lending activities targeted to LMI individuals or in LMI areas is sufficient to achieve a rating of satisfactory or outstanding. Specifically, the proposal would have established thresholds for the demographic and peer comparators based on a review of historical CRA PEs.

[105] The impact component responds to stakeholder comments about the need for more lending, investment, and services in banks' assessment areas and in other identified areas of need. It would have provided a transparent means of evaluating the impact of a bank's qualifying activities by establishing empirical benchmarks for assessing the dollar value of qualifying activities that, if set high enough, could incentivize more CRA activities. These benchmarks would have been tied to a bank's level of retail domestic deposits, consistent with the CRA statute's purpose of encouraging banks to engage in activities in areas where they draw resources by taking deposits.

[106] As proposed, a small bank was a bank with assets of $500 million or less in each of the previous four calendar quarters. Like the current asset-size thresholds, the $500 million threshold would have been adjusted annually based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers. *See CPI For Urban Wage Earners And Clerical Workers,* Social Security Administration, available at *https://www.ssa.gov/OACT/STATS/cpiw.html.*

example, arguing that the CRA evaluation measure lacked empirical support and would cause a decrease in CRA activities, some commenters recommended taking an approach that would retain the subjective approach of the current framework.[107] These commenters do not object to measuring the dollar value of activities per se; in fact, they support retaining the current framework, which measures the dollar value of CD activities.[108] In essence, the commenters disagree with the agency that the dollar value of retail lending activities should be measured.

After a careful review of these comments, the OCC has determined that the proposal's objective approach is more effective in achieving the purposes of the CRA statute: Incenting more CRA dollars into LMI communities and other identified areas of need. Commenters generally seek to retain as much subjectivity in the CRA regulations as possible on the premise that assessing CRA performance should largely involve judging difficult qualitative factors related to a bank's activities. The OCC disagrees with this policy course. While subjectivity may be viewed by some as an effective mechanism for enabling advocacy, a more subjective and qualitative framework is limited in its ability to encourage banks to invest more money into communities, which is ultimately the goal of the CRA.

Moreover, the commenters' assertions incorrectly suggest that the CRA evaluation measure is the proposal's only method of evaluating banks' CRA performance and, therefore, misunderstands how the proposal operates. As the agencies noted in the preamble to the proposal, like the current framework, the proposal includes multiple measures that operate together to assess both qualitative and quantitative aspects of a bank's performance. Other facets of the proposed framework—such as multipliers, CD minimums, and the quantification of LMI branches—operate in conjunction with the CRA evaluation measure to ensure that the framework continues to incentivize important (and at times smaller dollar value) activities that are presently accounted for and incentivized through qualitative evaluations. Further, the agency believes that providing credit in the CRA evaluation measure for CD services and branch distributions, while evaluating other retail banking services and alternative delivery systems through the application of performance context, obviates the need for a separate test for services in the final rule.

With respect to commenters' assertions that the proposed general performance standards would decrease the level of CRA spending, the agency notes that one analysis provided to support some of these assertions was flawed.[109] As noted in the preamble to the proposal, the CRA evaluation measure and associated benchmarks were based on the agencies' analysis of the available data about banks' on-balance-sheet qualifying activities. The preamble to the NPR explained the data used for this analysis, the method of analysis, and the limitations of existing data. It also explained that over time the data collection, recordkeeping, and reporting requirements in the proposal would remedy limits in the current data collection and allow the agencies to fine-tune the CRA evaluation measure benchmarks, if appropriate. The benchmarks were set to provide clarity and objectivity about the minimum level of activities that would result in a rating of satisfactory. The OCC believes that its method of estimating the CRA evaluation measure benchmarks for corresponding rating categories was economically sound and resulted in reasonable estimations of the benchmarks. In addition to these benchmarks, the proposal included other design features to incentivize banks to engage in a higher volume and variety of activities, and in more areas, to benefit the communities they serve.

In addition to general policy differences about the direction of reform and critiques about data, some commenters disagreed with specific details. For example, some commenters expressed support for keeping both the current small bank and intermediate small bank size categories in the final rule and allowing both categories of banks to be evaluated using the current performance standards.[110] Some of these commenters disagreed with the proposed small bank definition. Some industry commenters advocated for raising the asset size for small banks.[111] Commenters noted that when the small and intermediate small bank thresholds were established in 2005, 70.8 percent of banks qualified for the small bank test and 21.8 percent qualified for the intermediate small bank test. Applying those same percentages to the distribution of bank asset sizes today, these commenters suggested that eligibility for the small bank test should be capped at approximately $500 million, and eligibility for the intermediate small bank test should be capped at approximately $2.5 billion.[112] Another community group argued that small banks should be required rather than permitted to opt in to the proposal's general performance standards.[113]

The OCC agrees with commenters who stated that the current small bank asset size threshold does not reflect the current state of the banking industry and with the commenters who recommended retaining the current

[107] *See* Comment letter, NCRC, from J. Van Tol and J. Taylor, at 9 (Apr. 8, 2020) (''NCRC supports reform, but NCRC believes that incremental reforms building on the existing regulations would more effectively and transparently clarify what counts, achieve assessment area reform (where activity counts) and establish how those activities count in determining bank CRA ratings.'')

[108] *Id.,* at 80 (Apr. 8, 2020) (''Instead of using a ratio measure as the presumptive rating, a ratio such as CD financing divided by deposits (or assets or Tier 1 capital) could continue to be used on a [CD] test as one measure on that test, not the determinative measure.''). The recommendation of retaining the current assessment of CD activities, which measure the dollar value of these activities, shows commenters do not object to measuring the dollar value of activities.

[109] One commenter's assertion that the proposal will cause a loss of lending activity is based on an analysis developed more than a year in advance of the issuance of the NPR and is based on a misperception. Specifically, the analysis was based on a Federal Reserve Bank of Philadelphia study published in June 2017, which described what could happen in Philadelphia if activities in certain areas became ineligible for CRA credit. The proposal, however, does not eliminate eligibility for activities in any geographic areas. In contrast, the proposal would require certain banks to create additional assessment areas, expanding the geographic areas where the agencies would evaluate banks' CRA performance.

[110] One community group advocated for applying the small bank exemption to mission-focused banks, including CDFIs, regardless of asset size.

[111] Specifically, some commenters recommended raising the proposal's small bank threshold to the current small bank threshold applicable to intermediate small banks of $1.305 billion; other commenters suggested other thresholds, both higher and lower than $500 million. These commenters generally felt that, given the extent of the regulatory changes applicable to banks evaluated under the general performance standards, the $500 million threshold provided an insufficient accommodation for community banks, many of which have more than $500 million in assets.

[112] Other commenters suggested keeping the intermediate small bank category and raising the intermediate small bank threshold to various levels including $5 billion or $10 billion.

[113] The commenter argued that the $500 million small bank threshold would result in classifying some banks that are currently intermediate small banks as small banks and, because the small bank performance standards do not have a CD test, those banks would no longer be required to engage in CD activities. The agency notes that although the commenter argued against the proposal's objective approach and for the subjective evaluation methods of the current framework, community group commenters also argued that that if the agencies adopted the proposed objective approach, all banks should be subject to the approach. This all-or-nothing approach to reform would conflict with the community group's stated opinions about the superiority of the current subjective framework and the need for an incremental approach to reform. Another commenter recommended that the OCC apply the general performance standard to small banks if small banks perform as well as larger banks.

intermediate small category. As a result, the final rule preserves the current categorization of banks: Small, intermediate small, and large banks, while making some adjustments to the current thresholds and terminology. The final rule includes a $600 million threshold for small banks, which is consistent with other government standards for small financial institutions.[114] Although some small banks previously classified as intermediate small banks will no longer have express CD requirements in the final rule, CD lending activities conducted by any small bank will continue to be evaluated as a part of that bank's CRA evaluation.[115] The final rule retains the intermediate small category, renaming it intermediate banks, and adopts the commenters' proposed ceiling of up to $2.5 billion, based on commenters' analysis of where the intermediate small bank threshold would have to be set to capture the same portion of the industry as it captured in 2005. In the final rule, banks with greater than $2.5 billion in assets are subject to the general performance standards and banks with less than $2.5 billion in assets can opt in to the general performance standards.[116]

Both small banks and intermediate banks will also be subject to the final rule's clarified qualifying activities criteria and the assessment area provisions, including the requirement to delineate a deposit-based assessment area if a bank receives more than 50 percent of its deposits from areas outside of its facility-based assessment areas.[117] In this way, the final rule's approach will provide additional flexibility to smaller institutions without sacrificing the OCC's goal of achieving transformational CRA reform that provides clarity and encourages banks to conduct more CRA qualifying activities. In particular, because larger banks engage in a larger share of the CRA activities today and hold much of the nation's deposits, allowing the opt-in for smaller institutions and requiring larger banks to meet the new requirements will ensure that, on the whole, the banking industry is incentivized to engage in more qualifying activities. The OCC also no longer uses the term ''bank-level'' to refer to bank ratings or components of bank performance under the performance standards and make other conforming changes throughout the final rule.

Some industry commenters recommended that the agencies retain the separate performance standards for wholesale and limited purpose banks that are in the current regulation because those banks engage in no or limited retail activity. Some of these commenters noted that some elements of the general performance standards, such as the retail lending distribution tests and the branch distribution measure, would disadvantage wholesale and limited purpose banks and recommended retaining the current treatment of these banks. Under the proposal, these banks would have been evaluated under the general performance standards or a strategic plan. The OCC agrees with these commenters and believes that the current performance standards applicable to wholesale and limited purpose banks are well suited to evaluating those banks. Therefore, in the final rule, wholesale or limited purpose banks have the same definition and are subject to the same CD test as under the current regulations.[118]

The agency is also clarifying that the proposal did not eliminate consideration of services accounted for under the current framework's service test. Instead, the final rule continues to give qualitative consideration to services as commenters suggested through the use of performance context, and the final rule quantifies those service activities that are readily quantifiable.[119] Compared to the current service test, the proposed approach, which is adopted in the final rules, better achieves the OCC's goals of increasing objectivity while also giving due consideration to the qualitative nature of service activities.

General performance standards. Under the proposal, a bank evaluated under the general performance standards would have received a presumptive assessment area rating based on: (1) Its performance on the geographic and borrower lending distribution tests for each of its major retail lending product lines with at least 20 loans in that assessment area; (2) the average of its annual assessment area CRA evaluation measures; and (3) the quantified value of its CD loans and investments in that assessment area. A bank evaluated under the general performance standards would be assigned a bank rating based on: (1) Its rating in a significant portion of its assessment areas and in assessment areas that represent a significant portion of its deposits; (2) the average of its annual CRA evaluation measures; and

[114] For example, the SBA defines a small bank one with less than $600 million in assets.

[115] The OCC has clarified this by adding retail and community development to describe the type of CRA activities that the agency will evaluate.

[116] The OCC also made several other changes to the definition of small banks and to the opt in process in the final rule. Specifically, one commenter recommended that the agencies use an eight-quarter lookback to determine if a bank is a small bank. The OCC recognizes the importance of certainty regarding the bank size category and applicable CRA requirements but does not believe that allowing banks to be above the next highest size threshold for two years before becoming subject to the applicable requirements is appropriate. Therefore, the final rule classifies banks as small banks or intermediate banks if their assets are within the applicable threshold for four of the previous five quarters. The final rule does, however, provide an intermediate, wholesale, or limited purpose bank that ceases to meet the definition of an intermediate, wholesale, or limited purpose bank two years to comply with the general performance standards-related provisions of the final rule.

Commenters supported limiting the number of times a small bank that opts in to the general performance standards can opt out again or even eliminating the one-time opt out option. The agency is retaining the one-time opt out option as proposed in order to preserve some flexibility for community banks. Some commenters stated that agencies should not require that small banks opt in or opt out of the general performance standard six months prior to the start of its next evaluation period as provided in the proposal. Moreover, the agency agrees that the requirement to opt-in or opt-out at least six months before the start of its next evaluation cycle is not needed and has removed it from the final rule.

[117] Small and intermediate banks would be subject to the same performance standards as they are subject to today, including the same retail lending distribution tests.

[118] Other community group and industry commenters suggested a number of alternative performance standards and frameworks including, for instance, suggestions that the general performance standards could be optional for all banks or could apply initially to only a small number of large banks. Industry commenters suggested that the agencies add tailored standards for certain banks, such as CDFIs and military banks as well as specific requirements associated with lending outside of a bank's assessment areas. The agency considered these comments and, as explained in the preamble to the proposal, have considered various alternatives to evaluating CRA performance for banks other than small banks. The agency is making various revisions to the proposed rule, including adding intermediate banks and making various changes to the performance standards as explained below. The agency believes the performance standards set out in the final rule will provide greater regulatory consistency and certainty in evaluating banks' CRA performance.

[119] Commenters that urged retention of the current method of evaluating services argued that services should be considered qualitatively and that quantifying the value of services would minimize consideration given to services, which they believe would result in LMI communities being more dependent on fringe non-bank services. For example, these commenters oppose quantifying and adding the value of retail services to the CRA evaluation measure because they argue that such an objective approach would not give enough consideration to LMI deposit accounts, which are usually small. These commenters suggested a number of methods for continuing to evaluate services qualitatively, but more consistently. For example, these commenters suggested the use of standardized tables to present information such as service hours, giving qualitative factors 20 percent to 30 percent of the service test score, and providing guidelines for comparing pricing for LMI and non-LMI customers within and across banks.

(3) the quantified value of its total CD loans and investments.

i. Assessing a Bank's Distribution of the Number of Retail Loans

As proposed, a major retail lending product line would have been defined as any retail lending product line that composed at least 15 percent of a bank's overall dollar volume of retail loan originations during the evaluation period. Such product lines would have been evaluated under the retail lending distribution tests in each assessment area in which the bank originated 20 loans in that product line during the evaluation period. The retail lending distribution tests contained in the proposal are analogous to the retail lending distribution tests applied under the current CRA framework, however, the proposal made minimal alterations to add clear, objective standards that are consistently applied across all banks.

Under the proposal, a bank could have passed the geographic distribution test or the borrower distribution test by meeting or exceeding a threshold associated with the demographic comparator (which would be based on the demographics of the given assessment area) or a threshold associated with the peer comparator (which would be based on peers' performance in the given assessment area). Assessment under the peer comparator would be based on the loans originated by all banks subject to the general performance standards.

Community groups and industry commenters opposed the proposed pass/fail nature of the proposal's retail lending distribution tests and supported establishing gradations for the retail lending distribution test. Industry commenters noted that a bank would have failed the retail lending distribution test for an assessment area if it failed the test for a single product line. They further noted that this would have disadvantaged banks with fewer assessment areas because it would have been more difficult for them to achieve a satisfactory rating in a significant portion of their assessment areas.

Community group commenters recommended assigning ratings and numerical scores, which could be used to average scores across assessment areas, based on performance relative to the comparators. Some community group commenters also opposed allowing banks to pass the retail lending distribution tests by meeting or exceeding either the demographic or peer comparator thresholds, rather than requiring banks to meet or exceed both. Noting that it was unclear why the agencies proposed this approach, these commenters stated that a bank could pass the proposed distribution test with the peer comparator even if it reduces lending to LMI borrowers and communities and failed the test with the demographic comparator. Further, many community group and other commenters contrasted the approach in the proposal with the current framework, expressing the view that retail lending distribution currently counts for much more of the overall rating.[120]

The OCC considered several options to provide additional flexibility to the application of the retail lending distribution tests, including allowing banks to still receive a rating of satisfactory or outstanding, even if they failed one or more retail lending distribution tests. The OCC also considered assigning numerical scores which could be averaged across assessment areas. The OCC believes that the retail lending distribution tests are a very important method of evaluating a bank's CRA performance. Further, with respect to assigning a numerical score to each assessment area, the OCC determined that this overly complex approach did not provide additional benefit.

The OCC believes the proposed approach was sufficiently flexible to account for anomalies in assessment area performance and differences among banks but rigorous enough to incentivize banks to engage in originations to LMI borrowers, CRA-eligible businesses, CRA-eligible farms, and in LMI areas. As noted above, the proposed retail distribution tests are similar to the retail lending distribution tests applied under the current CRA framework, which many commenters support. Allowing banks to pass the geographic distribution tests using either the demographic or peer comparators allows the tests to be sensitive to market fluctuations and accounts for variance in demand tied to local demographic and economic conditions—something many commenters supported. Further, the proposed retail lending distribution tests would have only evaluated a bank's major retail lending product lines, a definition, which as described above, has been further refined in the final rule, and only would have assessed the distribution of those loans in assessment areas where a bank engaged in a non-trivial volume of originations. If a bank does not receive a presumptive rating of satisfactory or outstanding solely because it narrowly failed one retail lending distribution test, examiners may consider that factor when applying performance context to determine a final rating.[121]

In the agency's view, requiring a bank to pass all applicable retail lending distribution tests with respect to its most important retail lending product lines in an assessment area is consistent with the purpose of the retail lending distribution tests. Accordingly, the retail lending distribution tests in the final rule are pass/fail as proposed and banks must pass all applicable retail lending distribution tests in a given area to be eligible to receive a presumptive rating of satisfactory or outstanding.[122]

The agencies received conflicting comments on the proposed definition of major retail product line. A few community group commenters said that the retail lending distribution tests should be performed on all retail lending product lines with at least 20 originations during the evaluation period because a bank could be a major lender in an area even if the product line does not account for 15 percent of its overall retail lending portfolio. Those commenters stated that this method would avoid excluding lending in rural and underserved areas and would be consistent with the statutory mandate,

[120] Additionally, some commenters urged the agencies to reformulate the retail lending distribution tests. These commenters suggested a variety of options, including evaluating distribution only at the bank level rather than at the assessment area level, excluding assessment areas where the bank has a small market share, or providing a single borrower and geographic distribution test for each assessment area applicable to all major retail lending product lines. Further, a few commenters addressed application of the test to deposit based assessment areas, urging that these assessment areas should be excluded from the test, subject to a modified test, or subject to the test at the bank's option. As discussed in this section, the OCC believes that requiring banks to pass all applicable retail lending distribution tests in all assessments is appropriate because the tests assess the bank's significant product lines in areas where the bank has a significant relationship with the community, as demonstrated through its physical presence or concentration of deposits. This is especially true in light of the final rule's changes to the assessment loan threshold and the definition of major retail lending product line.

[121] The agency notes that, with respect to banks with specialized business models, the final rule will provide banks with the option of receiving a wholesale or limited purpose designation and being evaluated under separate performance standards. Small and intermediate banks will have the option of being evaluated under the general performance standards, including the retail lending distribution tests, or separate standards. Further, banks may also request approval of a strategic plan. Accordingly, the final rule provides ample flexibility to accommodate banks of different sizes and with different business models.

[122] Although some commenters stated that this framework did not provide an appropriate weight to the retail lending distribution tests, in reality, under the proposal and the final rule, a bank's performance on its retail lending distribution tests is just as important as its performance on the CRA evaluation measure or the CD minimums.

which they argue includes the obligation to evaluate banks' responsiveness.

In the OCC's judgment, eliminating the definition of major retail lending product lines would be problematic. As a preliminary matter, the OCC notes that the definition in the proposal did not introduce a new concept; instead, it articulated in regulation the varying unwritten processes that examiners use under the current framework to determine which retail lending products are significant enough to subject to retail lending distribution tests. The OCC continues to believe that CRA evaluations should account for banks' business models and strategies by applying the retail lending distribution tests to major retail lending product lines. Applying the retail lending distribution test to product lines where a bank only conducts a nominal amount of lending could disincentivize a bank from serving the unique needs of its community. However, a retail product that represents at least 15 percent of the bank's retail loan originations is a significant enough part of the bank's business strategy that the retail lending distribution tests should apply. As explained elsewhere in this rulemaking, the OCC believes that the other components of the general performance standards will sufficiently motivate banks to engage in qualifying activities in rural and underserved areas.

Commenters from industry and trade groups sought clarification on the meaning and application of various elements of the proposed retail lending distribution tests. Specifically, these commenters sought clarity on the meaning of the phrase bank-level dollar volume of total retail loan originations in the proposed definition of major retail lending product line. To provide additional clarity, the OCC revised the phrase the bank-level dollar volume of total retail lending originations to the bank's dollar volume of total retail loan originations. A bank's dollar volume of total retail loan originations is the sum of the origination value of all of the bank's qualifying and non-qualifying retail loans. These commenters also asked detailed questions about specific situations such as: Whether the current balance or the available amount for credit cards and lines of credit would constitute a major product line; whether credit line increases would constitute originations and how renewals, extensions, and other modifications would be treated under the new framework; and whether direct and indirect auto lending would be evaluated separately. In the agency's view, these detailed questions regarding the application of the rule are better addressed as part of the agency's ongoing administration of the CRA framework, including through examiner and other interpretive guidance.

Additionally, community group, industry, and trade group commenters suggested changes to the definition of major retail lending product line. These commenters suggested: (1) Raising the threshold for major retail lending product lines to 30 percent; (2) lowering the threshold for major retail lending product lines; (3) using a market share threshold; (4) using a range of 15 to 30 percent to define major retail lending product lines; (5) a number of methods for determining whether a product line is a major retail lending product line, including relying on a lookback period and only considering a product line if it remains within a specified range for three to five years; and (6) not applying the retail lending distribution tests to product lines that cross the 15 percent threshold during an evaluation period.[123]

The agency carefully considered commenters and have made a number of changes in the final rule. The final rule includes minor changes to clarify that, although the 15 percent threshold for major retail lending product line remains unchanged, each of the three consumer lending product lines will be treated as a separate product line for purposes of reaching that threshold. Additionally, the final rule provides that a bank will only be required to have at most two major retail lending product lines. If more than two retail lending product lines compose more than 15 percent of a bank's retail lending, the two largest retail lending product lines will be considered major retail lending product lines.

In addition, the OCC agrees with commenters that basing the definition of major retail lending product lines on the origination volume during the evaluation period would not provide banks with enough clarity and notice. Therefore, the final rule provides that a major retail lending product line will be based on the bank's originations in the two years preceding the beginning of its evaluation period and will not change during the evaluation period. The OCC acknowledges that using this definition means that if a bank makes a meaningful shift in its business strategy during its evaluation period, the bank's major retail lending product lines may not accurately reflect the bank's business strategy. In the OCC's experience, major shifts in business models generally take time to be realized, and, thus, the benefits of providing additional certainty by defining major retail lending product lines prior to an evaluation period outweigh any drawbacks to this approach. However, the final rule also allows banks to select more than two retail lending product lines, at their option.

Some industry commenters said the 20-loan threshold for applying a retail lending distribution test in an assessment area: (1) Was too low to be statistically valid; (2) could affect banks' willingness to conduct accommodation lending; and (3) did not account for the length of an evaluation period. These commenters suggested various alternatives including that: (1) The 20-loan threshold be increased to a threshold ranging from 30- to 100-loans on an annual or evaluation-period basis; (2) that the final rule adopt a threshold of either 15 percent of originations or 20 loans, whichever is lower; or (2) the threshold be higher for smaller loans. The OCC agrees that the 20-loan threshold is too low for an entire evaluation period and may lead to banks being evaluated for loans in areas where they engage in a very low volume of lending or where one additional (or one fewer) qualifying origination would likely affect the outcome of a retail lending distribution test. To address this, the final rule adopts a 20-loan *per year* threshold.

Industry commenters noted that the proposed retail lending distribution tests did not evaluate purchases in addition to originations, thereby deviating from the retail lending distribution tests performed as a part of the current CRA lending test. According to these commenters, many retail loans, such as CRA-eligible business loans, home mortgage loans, and various credit card products, can span multiple evaluation periods. In order to encourage banks to originate these loans on a consistent basis and across a wide array of assessment areas, these commenters asserted that it is crucial that: (1) There be a market where banks

[123] Other commenters opposed allowing consumer lending product lines to be major retail lending product lines or suggested they should only be major retail lending product lines at the bank's option or if consumer lending constituted a substantial majority of a bank's lending. These commenters expressed a number of concerns, for example, that evaluating consumer lending could lead to expanding risky or harmful lending to LMI individuals and burdensome information collection. The OCC considered these comments and concerns, but as discussed in this preamble, the definition of major retail lending product line has been modified in the final rule to ensure it only captures significant product lines. The agency feels it is appropriate to assess whether the bank's most significant retail lending product lines serves LMI individuals and geographies. Any evidence of discriminatory or other illegal credit practices associated with these products will be considered prior to assigning a final rating, as discussed below.

can sell these loans to other banks with CRA responsibilities; and (2) banks continue to have both purchased loans and originated loans evaluated in all retail lending distribution tests.[124]

The OCC appreciates these commenters' concerns but notes that, unlike the current framework, the proposal would have also evaluated a bank's CRA performance based on the on-balance-sheet value of its qualifying activities, including purchased qualifying retail loans. The purpose of the retail lending distribution tests is to evaluate whether a bank's retail loan originations are serving the needs of LMI individuals and communities when compared to the bank's total retail loan originations. Because purchases of qualifying retail loans are sufficiently accounted for in the CRA evaluation measure, the OCC is not making any changes to the final rule in response to these concerns.

The agencies did not apply a geographic lending distribution test to the home mortgage loan product line or the consumer loan product line in the proposal. The preamble to the proposal explained that the geographic distribution tests for home mortgage and consumer loans was not included because the agencies did not want to give positive consideration to loans that could have been provided to middle- or high-income borrowers in LMI areas. Industry and community group commenters recommended applying a geographic distribution test to the home mortgage loan product line under the general performance standards. These commenters emphasized the importance of encouraging banks to engage in mortgage lending in LMI areas. They argued that such lending, even if it results in mixed-income neighborhoods, has a stabilizing effect on LMI areas. These commenters suggested that evaluating all of a bank's home mortgage lending in LMI areas would help LMI people and areas.[125]

Upon careful consideration of the comments received, the OCC agrees that encouraging mortgage and consumer lending in LMI communities can help the economic development of these communities.[126] This goal is consistent with the agency's objective of encouraging banks to lend to areas of need and can be accomplished concomitantly with the goal of encouraging mortgage lending to LMI individuals by continuing to limit consideration in the CRA evaluation measures to mortgages made to LMI individuals.[127] Accordingly, in the final rule, a geographic distribution test applies to the home mortgage loan product line for all banks, consistent with the current framework.

Industry commenters opposed the proposed peer comparator for several reasons. They cautioned that it was both underinclusive and overinclusive because it did not include banks not subject to the general performance standards (*e.g.,* Board-regulated banks), but included all banks subject to the general performance standards without accounting for size, capacity or specialization. Instead, commenters suggested that the agencies consider using multiple peer comparators based on bank asset size. Industry commenters also stated that peer consumer lending data was limited, and that peer data generally could be stale by the time of its release. Further, one industry commenter asked for clarification regarding the demographic comparator for consumer loans, noting that the FFIEC demographic database does not contain such an income demographic.[128]

In the agency's view, comparing all banks subject to the general performance standards is appropriate and the data would be sufficient for its purpose: To determine whether a bank's distribution of retail lending to LMI individuals or CRA-eligible businesses or in LMI areas is significantly lower than expected in a given market based on the performance of other market participants subject to the general performance standards. Accordingly, the OCC is not making any changes to how the peer comparators are defined, but the final rule does clarify the description of the peer comparators by more clearly describing the components of what is being compared. Additionally, the final rule corrects the inadvertent error in the proposal by revising the consumer loan demographic comparator to low- and moderate-income households.

Under the proposal, the agencies would have collected and provided public data that would have allowed banks to apply the borrower distribution tests for home mortgage and consumer loans, small loans to businesses, and small loans to farms, and the geographic distribution test for small loans to farms and small loans to businesses. However, the agencies recognized that, even if the proposal were implemented, banks would have needed to rely on private datasets for the small loans to businesses and small loans to farms borrower distribution tests. The agencies invited comment on options for tailoring this requirement, which may have required banks to purchase datasets, by, for example, allowing banks below a certain asset size to use publicly available data as a proxy.

Industry commenters asserted that the requirement that banks perform their own retail lending distribution tests would increase compliance costs, particularly for community banks, by shifting distribution calculations from examiners to banks. They noted that this would likely necessitate additional employee training and hiring. Several commenters recommended that the agencies prohibit the use of private datasets and instead provide datasets to banks. Commenters suggested that, even if the agencies provided a dataset that banks could use at their option, large banks would be able to shop around for the dataset that provided the best available comparators. Some commenters recommended exemptions from the retail lending distribution tests when the agencies' data is insufficient.

The OCC understands and agrees with the concerns about the use of proprietary data and is revising the final rule to require examiners, not banks, to calculate the retail lending distribution tests, consistent with the current framework. Banks will not be required to purchase any data. The OCC believes that it has access to datasets, including

[124] In addition, at least two commenters suggested that MBS be considered within the retail lending distribution tests rather than as a CD activity.

[125] However, a few commenters that expressed concern about displacement of LMI individuals in LMI census tracts suggested other alternatives, including limiting consideration of home mortgage lending in LMI geographies to middle income households, high-cost geographies, or based on property values.

[126] Many studies have shown the importance of encouraging mixed-income housing. *See* Diane K. Levy, Zach McDade, Kassie Bertumen, Urban Institute, *Mixed-Income Living: Anticipated and Realized Benefits for Low-Income Households,* Cityscape: A Journal of Policy Development and Research, Jul. 2013), at 15; Diane K. Levy, Zach McDade, Kassie Dumlao, Urban Institute, *Effects from Living in Mixed-Income Communities for Low-Income Families: A Review of the Literature* (Nov. 2010). This research found that mixed-income communities provide benefits to low-income families. However, it also noted that not all expected benefits have materialized.

[127] Although the OCC remains concerned about avoiding displacement, the agency believes that looking at lending in LMI census tracts for the retail lending distribution tests, while only allowing home mortgages to LMI individuals to count in a bank's CRA evaluation measure, will mitigate any displacement concerns while encouraging banks to lend in LMI areas that may need additional access to credit.

[128] Several other commenters argued that using peer comparators sets up a race to the bottom. The OCC believes that the final rule's evaluation framework, including the specific CRA evaluation measure benchmarks that will be established, will encourage banks to engage in more qualifying activities. Additionally, the agency will be able to review the performance standards, including the thresholds associated with the retail lending distribution test peer comparators on an ongoing basis to ensure the framework is achieving the agency's goals.

the datasets used today, that are sufficient to establish the demographic comparators for the small loans to business and small loans to farms retail lending distribution tests.

ii. Assessing the Impact of a Bank's Qualifying Activities

To provide clarity and consistency to the CRA evaluation process, the proposal included a uniform method of measuring the impact of a bank's qualifying activities and specified clear benchmarks required to achieve specific ratings categories. Under the current framework, examiners measure the impact of banks' CRA activities in a number of ways and examiners make their own varying judgments about how much activity is enough to receive a rating of satisfactory or outstanding. In the proposal, the impact of a bank's qualifying activities would have been assessed through the calculation of its CRA evaluation measure and banks would have known the benchmarks for the level of qualifying activity necessary to achieve any particular rating category.

In the proposal, a bank would have calculated its bank CRA evaluation measure and assessment area CRA evaluation measure annually by taking the sum of: (1) A bank's qualifying activities value *divided by* the average of its quarterly retail domestic deposits; and (2) a calculation that accounts for a bank's branch distribution. The CRA evaluation measure would have been calculated as follows:

$$\frac{\textbf{Qualifying Activities Value}}{\text{Average quarterly } \textbf{Retail Domestic Deposits}} + .01\left(\frac{\text{Branches in Specified Areas}}{\text{Total Branches}}\right)$$

The agencies received many comments opposing the proposal's one ratio approach for measuring CRA performance. These comments misapprehend what was proposed; the proposal did not contain one ratio. The proposal's performance standards that the agencies would have used to assess banks' CRA performance would involve tens, if not hundreds, of measures for most banks. Furthermore, the proposal would have retained the concept of performance context, which would have provided a mechanism for qualitatively evaluating a bank's capacity and opportunity to engage in qualifying activities and its responsiveness to community needs. While some elements of the general performance standards would have looked at a bank's qualifying activities compared to its deposits, a bank's ratings under the proposal would also have been based on the bank's performance on the retail lending distribution tests and performance context information. Therefore, the term one ratio, which was used in many comments, is simply a misapprehension or a mischaracterization of the OCC's approach.

One community group commenter stated that using a ratio-based framework to assess past performance by measuring loans-to-deposits in a primary service area is contrary to the CRA statute because this type of model was proposed in the first version of the 1977 bill, was criticized in congressional hearings about the bill, and ultimately was not enacted.[129] The OCC disagrees. The hearing witness testimony cited by the commenters was not aimed at a methodology to assess past performance. Instead, the testimony criticized a proposed provision that would have required banks to predict what *future* ''proportion of consumer deposits . . . will be reinvested by a lender in [an] area.'' [130] The witness made no similar criticism of using a ratio-based framework for assessing *past* performance. Rather, the same witness stated ''the past record of the ratio of aggregate loans made to deposits received for a submarket area can be useful. . . . Presumably, the regulatory agencies would obtain such data'' in order to evaluate whether a bank is meeting the credit needs of areas it is already chartered to do business.[131]

These commenters also observed that witnesses and senators participating in the 1977 hearings claimed that encouraging banks to meet the credit needs of the areas from which they receive deposits was an attempt at credit allocation that would lead to market inefficiency.[132] The OCC disagrees with the commenters' interpretation of these statements. These statements in the hearings more broadly opposed any governmental pressure through the CRA to reinvest deposits in depositors' communities and are not conclusive for understanding congressional intent regarding any ratio-based approach for measuring bank performance. CRA was passed despite this opposition and, rather than detailing in the statute how performance would be measured, Congress has authorized the agencies to determine through regulation the appropriate approach for evaluating and examining banks' performance.[133] Consistent with that authority, the OCC's approach to measuring CRA performance advances the purpose of the statute.[134]

Advocating for a more subjective approach to CRA, a community group commenter expressed concern that the CRA evaluation measure may not be consistent with the CRA statutory requirement that a bank must help to meet the credit needs of its entire community in a safe and sound manner. To the contrary, the OCC expects that *all* bank activities are conducted in a safe and sound manner. The OCC will use performance context as necessary to address factors such as financial condition, loan product demand, or relevant demographic conditions that may affect a bank's ability to engage in

[129] This commenter also stated that a single loan-to-deposit ratio was rejected during the 1995 regulatory revisions in favor of multiple metrics. Like the current regulations, the proposal contained multiple metrics.

[130] *Hearings Before the S. Comm. on Banking, Housing, and Urban Affairs,* U.S. Senate 95–1 (Mar. 23, 24, and 25, 1977) at 151 (testimony of Henry Schechter, Director of Department of Urban Affairs, AFL–CIO) (''[t]here is almost no way of knowing how large a demand for various types of credit will emanate from residents and business people of the local community, and how much of such a volume of credit could be granted consistent with the safe and sound operation of such institutions'').

[131] *Id.*

[132] *See, e.g., id.* at 153; 315–16; 324; 335; 368; 428. Sen. William Proxmire, Chairman, S. Comm. on Banking, Housing, and Urban Affairs refuted these concerns. *Id.* at 2 (''To criticize reinvestment incentives as a form of credit allocation is disingenuous . . . . I think that debate in the context of the reinvestment bill as a red herring.'').

[133] 12 U.S.C. 2905, 2906.

[134] *See, e.g.,* 123 Cong. Rec. 17630 (1977) (statement of Sen. Proxmire) (describing CRA's purpose as follows: ''I am talking about the fact that banks . . . will take their deposits from a community and instead of reinvesting them in that community . . . they will actually or figuratively draw a red line on a map around the areas of their city, sometimes in the inner city, sometimes in the older neighborhoods, sometimes ethnic and sometimes black, but often encompassing a great area of their neighborhood. The agency also knows that small town banks sometimes ship their funds to the major money markets in search of higher interest rates, to the detriment of local housing, to the detriment of small business, and farm credit needs . . . Therefore, the committee included [CRA] to reaffirm that banks and thrift institutions are indeed chartered to serve the convenience and needs of their communities, and as the bill makes clear, convenience and needs does not just mean drive-in teller windows and Christmas Club accounts. It means loans.'').

CRA activities in a safe and sound manner. Once the empirical benchmarks are set, as discussed below, the OCC also anticipates adjusting the empirical benchmarks periodically based on available data.

Some community group commenters voiced concerns that the proposed CRA evaluation measure would have been more complex and rigid than the current system and the measures and benchmarks would not be tailored to local credit needs. Some industry commenters expressed similar concerns that the CRA evaluation measure and associated benchmarks would not have taken into consideration the diversity of bank business models, community needs and opportunities, and local economic conditions. They recommended that the final rule implement more tailored measures or benchmarks.

Although the OCC considered explicitly tailoring the CRA evaluation measure to account for local community conditions, it did not believe the incremental benefits of such an approach were worth the added complexity. Further, the agency believes that the proposed CRA evaluation measure was already sufficiently flexible and adequately tailored to local needs. The proposed CRA evaluation measure and benchmarks provided an objective standard for assessing a bank's reinvestment in the communities from which it receives deposits and would have scaled the bank's obligation to reflect its presence in the market, as measured by the dollar volume of retail domestic deposits it receives from an area. Furthermore, prior to assigning assessment area and bank ratings, the OCC would have assessed performance context factors, which would have accounted for the specific facts and circumstances that affect a bank's CRA capacity and opportunities. Because the proposed CRA evaluation measure, and the entire general performance standards framework, is sufficiently flexible to account for the variance in bank business models, community needs and opportunities, and local economic conditions, the OCC did not adopt any changes to the CRA evaluation or its calculation to address these concerns.[135]

Some industry commenters stated that the CRA evaluation measure disproportionately advantages large banks because these banks have greater opportunity to participate in large development projects, which will boost their qualifying activities values more than smaller-dollar loans and investments. The OCC does not believe this concern will be realized because the denominator of the CRA evaluation measure in the proposal would have depended on a bank's market presence, as measured by its retail domestic deposits. Small banks have fewer deposits and thus would have had smaller CRA obligations than large banks. Accordingly, even though large banks may be better able to engage in large projects, that would not disadvantage smaller banks. The OCC believes that the CRA evaluation measure adequately accounts for bank size by using retail domestic deposits in the denominator and did not make any changes in response to this concern in the final rule.

The first component of the CRA evaluation measure would have measured the value of qualifying activities as a proportion of total retail domestic deposits. The proposal would have valued most qualifying loans and investments based on their average on-balance sheet value during the evaluation period. Community groups and some industry commenters opposed the on-balance sheet approach of the first component of the CRA evaluation measure. Community groups described the CRA evaluation measure as a simplistic, narrow measure that would: (1) Reduce reinvestment; (2) encourage large, long-term, and easy deals that banks finance in the ordinary course of business;[136] (3) be inconsistent with the statutory written evaluation requirement; and (4) solely determine a bank's rating at the expense of other factors, including qualitative ones.[137] Community group and government commenters suggested that the measure was too simplistic because it aggregated all types of activities and failed to distinguish between types of activities, like CD activities and retail activities, and product categories that may be more or less useful for LMI borrowers.[138] Community group and industry commenters also cautioned that the balance sheet-based approach would not provide enough credit for smaller-dollar activities, such as LMI mortgage lending and CRA-eligible business lending, thereby disincentivizing them. Other commenters were concerned that the CRA evaluation measure would de-emphasize mortgage lending or other specific activities like bank investments in CDFIs. Community groups commented that disincentivizing lower dollar loans would particularly disadvantage rural areas, underserved areas, and persistent poverty counties, which receive a higher proportion of small-dollar mortgage loans. At least one industry commenter disagreed with these commenters, stating that banks would need to engage in smaller-dollar activities because there were too few large dollar activities available. Several community group commenters stated that using the CRA evaluation measure and CD minimums to determine a bank's presumptive rating could allow a bank to determine it has met its presumptive rating goal before the end of its evaluation period. Then a bank would be able to cease or slow CD activities for the remainder of its evaluation period which could disrupt local CD efforts. Other commenters thought banks would not be incentivized to partner with community organizations after they met the minimums because responsiveness will no longer be evaluated.

To address these concerns, commenters offered a number of potential solutions. Community groups recommended the inclusion of a single transaction limit and evaluating the number of retail loan originations and purchases, as is done under the current framework, rather than their on-balance sheet dollar value, to encourage originations and purchases of loans. Some industry and community group commenters recommended that the proposal focus on the number of loans more broadly, not just with respect to retail lending. Other industry commenters recommended giving banks a percentage goal for the number of each type of retail loan category that should be qualifying loans. One commenter even recommended adding a floor for different types of activities. Community groups also recommended retention of the separate lending, investment, and service tests from the current framework

[135] Because the agency acknowledges the limitations of the existing data, the final rule does not include specific CRA evaluation measure benchmarks associated with each rating category.

[136] Alternatively, one commenter suggested that the approach could overvalue LMI home mortgage lending and recommended an alternative that would include the lesser of originations or the amount on the balance sheet.

[137] Some commenters stated the framework would effectively short-change CD activities in comparison to other CRA activities. Some commenters also suggested that qualitative criteria account for 20 percent to 30 percent of a component test score.

[138] Some commenters also argued that aggregating different types of activities would reduce transparency about how the bank is serving its community's needs. The OCC notes that although the final rule aggregates activities for the purposes of the CRA evaluation measure, stakeholders will still have information about a bank's performance with respect to different types of qualifying activities by observing its performance on the retail lending distribution tests and CD minimums, its data reporting, and through the information included in its CRA PE.

to provide a more holistic approach.[139] Other commenters suggested measuring large dollar loans and investments separately from other activities.

Prior to the issuance of the proposal, the agencies heard many complaints from stakeholders that the current framework's focus on new activity inappropriately incentivized short-term over long-term activities and investments.[140] Commenters indicated this was problematic because many businesses, individuals, and CD programs and projects need stable, long-term funding. As discussed in the preamble to the proposal, evaluating the outstanding dollar value of on-balance sheet CRA activities would have solved this issue by assessing a bank's ongoing commitment to its communities and encouraging stable sources of funding. The CRA evaluation measure's focus on the value of on-balance sheet loans and investments would also have disincentivized churning of activities that provide banks CRA credit without providing new value or long-term stability to the communities that banks serve. Further, the proposal would continue to apply performance context factors that would evaluate a bank's responsiveness to communities' needs throughout its evaluation period.

The CRA evaluation measure will encourage banks to engage in more qualifying activities by providing them the flexibility to engage in qualifying activities that best fit and complement their business models and the needs of their communities. By aggregating different types of qualifying activities, the proposal does not dictate a bank's business model or strategy, but rather evaluates the impact of the full scope of a bank's qualifying activities. The OCC disagrees with commenters who suggest that the proposed CRA evaluation measure would have reduced reinvestment because the agencies would have had the ability to set the CRA evaluation measure benchmark at levels high enough to increase banks' reinvestment into the communities from which they receive deposits. Additionally, by comparing the quantified dollar value of a bank's CRA activity to a bank's retail lending deposits the CRA evaluation measure would have helped the agencies fulfill the statutory purpose of CRA, which is to encourage banks to reinvest deposits into the communities from which they receive them, without requiring a specific business model. Furthermore, by providing multipliers for activities conducted in CRA deserts and using performance context factors to examine the responsiveness of activities, the final rule will encourage smaller dollar activities and activities in CRA deserts.

The agencies recognized that the CRA evaluation measure alone is not adequate to assess a bank's CRA performance. For this reason, the proposal included other quantitative and qualitative assessments of a bank's CRA performance. For example, at the assessment area level, the proposal also would have included the retail lending distribution tests, which would have evaluated the distribution of a bank's number of originations and a measure of a bank's CD activities as compared with its retail domestic deposits. A bank's presumptive rating would have been based on its rating in a significant portion of its assessment areas, its CRA evaluation measure, and a measure of its CD activities. Performance context factors would have been used to assess many qualitative factors for the bank, including in each assessment area. A bank's assigned rating would have been based on its presumptive rating. The assigned rating and the explanation for the rating, along with the facts and data supporting the rating and conclusions would have been included in a bank's PE. This robust framework, with its many methods of evaluation, makes the retention of the separate tests used today superfluous.

The OCC considered including a single transaction limit in the proposal, but as stated in the preamble to the proposal, because the proposal would have assessed the performance of banks that are subject to the general performance standards by considering the distribution of retail lending activities and the dollar value of qualifying activities, the OCC does not believe that a single transaction limit is necessary. Moreover, a single transaction limit could discourage activities like affordable housing and infrastructure projects that have a large dollar value, but help meet the needs of LMI communities and other underserved communities.[141] Moreover, the other elements of the final rule would address commenters' concerns, including the retail lending distribution tests, some modifications that have been made to the quantification of certain types of retail loan originations in the rule,[142] and the addition of some multipliers for retail lending activities.[143] For these reasons, the OCC is not adding a single transaction limit in the final rule.

Some industry commenters stated that assets or Tier 1 capital should be the denominator for the CRA evaluation measure instead of retail domestic deposits because assets better reflect a bank's capacity to engage in qualifying activities. These commenters noted that using deposits would result in larger obligations for community banks because of their business models than if the CRA evaluation measure used assets. These commenters also suggested that using Tier 1 capital or assets would be easier for banks to implement than requiring banks to geocode deposits. The OCC believes that the introduction of the intermediate bank category and intermediate bank performance standards in the final rule will address most of these commenters' concerns. Furthermore, the OCC believes that for most banks, retail domestic deposits adequately reflect a bank's capacity to engage in qualifying activities. To the extent a bank is subject to unique constraints, examiners will consider those constraints when applying performance context factors or a bank may submit a strategic plan.

[139] A number of community group commenters specifically opposed elimination of the investment test. They expressed concerns that doing so would decrease investment in affordable housing projects, make it more difficult for CDFIs to raise equity, and decrease the availability of grants. The OCC believes that the retention of a separate investment test is not necessary to encourage these types of activities. As discussed above, the final rule provides a number of incentives for banks to engage in CD investments and activities with CDFIs, including by providing a multiplier for those activities.

[140] Many ANPR commenters mentioned this problem. *See* National Association of Affordable Housing Lenders at 12, *https://www.regulations.gov/document?D=OCC-2018-0008-0981* (''Currently, only investments (but not loans) made in prior exam periods continue to generate CRA credit. This system perversely gives banks more credit for making and then renewing a short-term loan than for making a long-term loan in the first place. We also observe that examiners do not consistently recognize the value of investments made in prior exam periods.''); American Bankers Association at 25, *https://www.regulations.gov/document?D=OCC-2018-0008-0583;* Opportunity Finance Network at 5, *https://www.regulations.gov/document?D=OCC-2018-0008-0525.*

[141] Infrastructure projects are critical for underserved communities. *See* Kolby Kickingwoman, *Infrastructure in Indian Country needs to be 'fair and equitable,'* July 12, 2019, available at *https://indiancountrytoday.com/news/infrastructure-in-indian-country-needs-to-be-fair-and-equitable-6gL-b6cvqUuWkVx91Z64fg* (discussing the need to improve infrastructure in Indian country); Donna Kimura, *Developers Reveal the Costs of Doing Business,* July 1, 2017, available at *https://www.housingfinance.com/news/developers-reveal-the-costs-of-doingbusiness_o* (discussing the cost associated with building affordable housing).

[142] The OCC recognizes the importance of encouraging retail loan originations and, in response to commenters who suggested that the proposed CRA evaluation measure does not adequately value originations that are sold within one year, the final rule will provide additional credit for those loans.

[143] The OCC has added multipliers for retail lending activities in CRA deserts and generated from LMI branches.

In the second component of the CRA evaluation measure, the number of the bank's branches located in LMI census tracts, Indian country, underserved areas, and distressed areas during the same annual period used to calculate the qualifying activities value would have been *divided by* the bank's total number of branches in that annual period and *multiplied by .01.* This calculation would have quantified a bank's distribution of branches and increased a bank's CRA evaluation measure by up to one percentage point based on the proportion of a bank's branches in those specified areas.

Community group commenters opposed the CRA evaluation measure's method for quantifying branches on the grounds that it would reduce consideration of branches.[144] They stated that branches were likely to account for a small portion of the CRA evaluation measure when compared with the current 25 percent weighting for the service test, which they recommended be retained. They also noted research suggesting that the current service test has prevented branch closures in LMI communities and warned that the CRA evaluation measure would likely lead to branch loss by reducing the weight given to branches. A number of industry commenters also recommended that the agencies increase the credit provided for the measure of a bank's distribution of branches.

The agencies sought to give a bank's branch distribution appropriate weight. Under the current CRA regulations, for a bank evaluated under the service test, a bank's branch distribution generally accounts for 50 percent of the service test, which is 25 percent of a bank's CRA rating. This means that branch distributions today technically account for approximately 12.5 percent of a bank's CRA rating. However, because branch distributions are not quantified and there are no objective targets, it is not clear how much credit a bank will receive for a given branch distribution. In the proposal, a bank could have received up to one percent credit for its branch distribution, which would be one sixth, or 16.7 percent, of the six percent CRA evaluation measure that would have been required to satisfy the CRA evaluation measure prong of the general performance standards for a satisfactory rating. However, a bank would have only received the one percentage point of CRA evaluation measure credit if 100 percent of its branches were in an LMI, distressed, underserved, or Indian Country. The OCC used branch information from the FDIC's Summary of Deposit (SOD) [145] data and demographic information from various sources to identify the bank branches in distressed, underserved, and LMI census tracts and in Indian country and other tribal and native lands census tracts.[146] The OCC used that information to analyze the proportion of branches in distressed, underserved, LMI, and Indian country and other tribal and native lands census tracts by bank and calculate the median proportion of branches in distressed, underserved, LMI and Indian country and other tribal and native lands for branches with assets of $2.5 billion or more. The analysis showed that, for banks subject to the general performance standards, the median percentage of a bank's branches in those areas in 2019 was approximately 28 percent. To ensure that banks are still receiving appropriate credit for their branch distribution, the final rule provides that a bank's branch distribution will be multiplied by .02, meaning that a bank with a branch distribution close to the median will receive .56 percent of credit as part of its CRA evaluation measure. However, banks will not be able to receive more than one percent credit for their branch distribution as a part of its CRA evaluation measure.[147]

Industry commenters noted that the CRA evaluation measure does not account for branches that serve LMI neighborhoods, Indian country, underserved areas, and distressed areas but are not in those areas, such as those in an adjacent or nearby census tract. The OCC agrees that branches that are in adjacent or nearby census tracts can still serve those areas. The final rule includes in the numerator of the branch distribution measure both: (1) The number of branches in LMI census tracts, Indian country and other tribal and native lands census tracts, underserved areas, and distressed areas; and (2) the branches that serve those areas, divided by the total number of branches in that assessment area. However, banks will need to demonstrate that the branch serves a sizable portion of individuals from those communities for the branch to be included in the numerator of the branch distribution measure. The agency does not expect to give credit to branches not located in LMI tracts and that serve only a small or nominal amount of the nearby LMI community.

Three industry commenters requested clarification as to how the CRA evaluation measure would be calculated for banks following a merger or acquisition, noting that it is common for merging institutions to operate different systems for a period of time after the transaction closes. The OCC intends to evaluate the surviving bank under the terms of the final rule when a merger occurs during an evaluation cycle, similar to how evaluations are conducted in these circumstances under the current framework. For banks subject to the general performance standards, investments that remain outstanding after the merger will included in the calculation of the CRA evaluation measure, and the surviving bank will be subject to the data collection, recordkeeping, and reporting obligations of the rule.

[144] Additionally, some community group and other commenters expressed concern that the proposal would not incentivize branches in LMI communities. Other commenters noted that the proposal would not consider branch openings and closings and would treat a bank with one branch in an LMI area more favorably than a bank with a large number of branches (but not 100 percent) in LMI areas. Commenters offered a number of suggestions for giving additional credit to branches, such as deducting CRA value for branch closures in underserved neighborhoods, increasing the multiplier to .025, or more or giving credit for maintaining unprofitable branches.

[145] *See* Deposit Market Share Reports—Summary of Deposits, FDIC, available at *https://www7.fdic.gov/sod/*. Only branch types 11, 12, and 23 were included in this analysis.

[146] The OCC used the FDIC SOD data to obtain the address of branches with branch codes 11 and 12. The agency identified distressed middle-income census tracts using the definitions in the proposal, along with FFIEC census data files, BLS County Unemployment data, American Community Survey data, and the Census 2000 and Census 2010. Consistent with the proposal and the final rule, the OCC identified underserved middle-income census tracts relying on the most recently available data maintained by the Economic Research Service of the U.S. Department of Agriculture as well as tract centroid coordinates from a mapping software application to identify census tracts where there were no branches in the census tract and no branches within a specified distance to the tract centroid. LMI census tracts were identified based on FFIEC census data files. Indian country was identified by using the most Census Bureau's American Indian Alaska Native and Native Hawaiian (AIANNH) TIGER geography file. The OCC included Indian other tribal and native lands census tracts in this calculation based on the changes made to the final rule.

[147] The OCC considered alternative ways to provide credit for branches, including the myriad of ways suggested by commenters. However, the OCC believes that the incremental benefits that these approaches would provide in some unique circumstances do not warrant the additional complication. By giving banks credit for their branch distribution directly through the CRA evaluation measure, the final rule provides a simple and clear mechanism of providing banks a predictable amount of credit for their branch distribution. The final rule also gives examiners the flexibility to consider other elements of a bank's delivery systems and branching strategy while applying performance context factors.

iii. Ensuring Banks Are Responsive to Local Needs

As proposed, to receive a bank presumptive rating of satisfactory or outstanding, a bank had to receive at least a satisfactory or outstanding, respectively, in those assessment areas: (1) That represent a significant portion of its assessment areas; and (2) where it receives a significant portion of its retail domestic deposits. The proposal did not define significant portion but asked commenters for suggestions for how this phrase should be defined.

Many negative comments on this provision were based on the misapprehension that the agencies had defined significant portion as 50 percent. Some community group commenters expressed concern that requiring a bank to achieve a satisfactory or outstanding in a significant portion of its assessment areas to receive those bank ratings could result in the bank disregarding some assessment areas, which could exacerbate the problem of CRA deserts, and would be inconsistent with the statutory mandate to evaluate banks' efforts to serve their entire communities. These commenters advocated for a CRA rating system that takes into consideration performance in all assessment areas and has gradations of performance (not just pass/fail thresholds). One commenter suggested a 100-point scoring system or an averaging of assessment area scores in all aspects of the rating system, not just the CRA evaluation measure. However, at least one of these commenters stated that if the term significant portion had to be defined, they supported an 80 percent threshold over a 50 percent threshold. Other commenters, representing community groups and industry, suggested thresholds that ranged from 40 percent to 100 percent. Other industry commenters said that the pass-fail thresholds in the proposed rating system did not account for nuances inherent in banks' CRA activity in communities with varying needs. Although these commenters also advocated for gradations, they stated that if gradations were not adopted, then the agencies should adopt a significant portion threshold that is no more than 50 percent. One community group commenter recommended that the agencies distinguish between the percentage required for a satisfactory rating and an outstanding rating, which they suggested should be 65 percent and 75 percent, respectively.

The OCC reviewed the suggestions of commenters, used its supervisory judgment and experience and conducted data analysis to determine how to establish a numerical threshold to define significant portion in the final rule. Some commenters recommended a threshold of 80 percent, but some were concerned that an 80 percent threshold would effectively apply a higher standard to small banks, which typically have fewer assessment areas. The OCC recognizes that, for banks with fewer assessment areas, defining significant portion as 80 percent would effectively require these banks to achieve satisfactory or outstanding in 100 percent of their assessment areas, imposing a higher requirement on them. Using the FDIC's SOD data as a proxy for the number of assessment areas,[148] the OCC was able to estimate the number of assessment areas for banks in different asset size categories and the distribution of those assessment area counts. For banks with assets between $2.5 billion and $10 billion, the median estimated number of assessment areas is five. After considering this analysis, along with commenters' suggestions and the OCC's supervisory judgment, the final rule does not use the term significant portion. Instead, the final rule provides that for a bank with more than five assessment areas to receive a presumptive rating of satisfactory or outstanding, the bank must receive at least the corresponding rating in: (1) 80 percent of its assessment areas, and (2) in assessment areas from which the bank receives at least 80 percent of the retail domestic deposits it receives from its assessment areas. For a bank with five or fewer assessment areas, the final rule provides additional flexibility and states that, to receive a presumptive rating of satisfactory or outstanding, a bank must receive at least the corresponding rating in: (1) 50 percent of its assessment areas, and (2) in the assessment areas from which it receives at least 80 percent of its retail domestic deposits received from its assessment areas.

iv. Ensuring Banks Engage in a Minimum Level of CD Activities

The general performance standards in the proposal established minimums for a bank's quantified dollar value of CD lending and investment as compared to retail domestic deposits to achieve a satisfactory or an outstanding rating. To achieve a presumptive rating of satisfactory or outstanding, the sum of the quantified dollar value of CD loans and CD investments, *divided by* the average of the bank's retail domestic deposits would have needed to meet or exceed two percent. The CD minimums would have applied for both the bank presumptive rating and the assessment area presumptive rating.

Some industry commenters said that the CD minimums would have been too rigid because they did not account for local community conditions. Some of these commenters recommended that the CD minimums, on their own, account for community needs and local conditions and that there was no need for a separate application of performance context factors.[149] A few other commenters criticized the pass or fail nature of the CD minimums and suggested various alternatives. A few commenters suggested that the minimum apply only at the bank level, or that a lower minimum apply at the assessment area level than at the bank level.[150]

The OCC believes that accounting for local community attributes is important. The proposed CD minimums would have been only one of three performance standards and were meant to reflect the minimum amount of CD activity that the agencies expect all banks to engage in. The CD minimums would have automatically accounted for local conditions because they would have been based on the level of retail domestic deposits a bank receives from a given area. The agencies would have further assessed local community conditions and needs through the application of performance context factors. The performance context factors

[148] For branches in MSAs, each MSA with at least one branch was counted as an assessment area for the bank. Branches in non-MSA areas, the number of non-MSA counties in which the bank has at least one branch, was divided by two to obtain an estimate of the bank's count of assessment areas for branches in non-MSA areas.

[149] A few industry and community group commenters criticized the proposed CD minimum, stating that it would favor larger transactions over small ones. A few community group and other commenters suggested further refinements such as applying minimums to both lending and investment activity or weighting favored activities more heavily. As discussed in this preamble, the agency believes that other elements of this framework, including performance context factors and multipliers, will ensure that smaller-dollar transactions and other responsive activities are appropriately incentivized.

[150] Community groups raised concerns that the minimums would have been reached easily because of CD multipliers and the expanded qualifying criteria. Additionally, some commenters, including community groups, expressed concern that banks could meet the CD minimum through lending alone, which might decrease investments. As noted below, the final rule does not adopt a specified minimum level of CD activities. The OCC will gather additional data and conduct additional analysis to ensure that the CD minimums are set at an appropriate level for the framework in the final rule, which also adopts some changes that restrict the applicability of CD multipliers and the qualifying activities criteria, including the adoption of a CD floor that must be met before any multipliers apply.

in the proposal provided consideration of a bank's ability to engage in the volume of CD lending and investment required to meet the CD minimums, as well as local needs, opportunities, and economic conditions. Such information would have been considered by examiners as they assessed whether a bank's presumptive rating should be adjusted.

Some industry commenters stated that by only providing credit for CD activities that occur outside of banks' assessment areas in the bank CRA evaluation measure, the proposal would have made it harder for banks to meet the assessment area CD minimums.[151] The OCC does not agree with this assertion. Under the proposal, banks subject to the general performance standards are required to engage in a minimum level of CD activities in each of their assessment areas based on their retail domestic deposits received from the assessment area. These banks would also have to engage in a minimum level of CD activities across the country based on their total retail domestic deposits. Providing banks credit for engaging in qualifying activities outside of their assessment areas was designed to incent activities in underserved communities that are often not a part of any bank's assessment area and to provide banks with flexibility to achieve their overall CD obligations.

One community group noted that if the final rule does not distinguish between prior period and new CD investments for the purposes of the CD minimums, then banks will not have an incentive to engage in new activity. Others were concerned that the CD minimums aggregated both CD loans and investments into one category. Some commenters suggested separate thresholds for CD loans and CD investments.[152] The OCC recognizes the importance of incentivizing new CD activities and, accordingly, has revised the final rule to provide that a bank cannot receive a multiplier for any activities conducted unless the quantified dollar value of its current period CD activities approximately equals the quantified dollar value of its prior period CD activities. Additionally, although the final rule does not provide a separate minimum for investments, the rule provides a multiplier for most CD investments to ensure banks are incentivized to conduct investments.

The OCC believes that the CD minimums as proposed provide a meaningful assessment of whether a bank has engaged in a sufficient level of CD activities, as a proportion of the retail domestic deposits, to be eligible to receive a satisfactory or outstanding. Consistent with the statute, the final rule creates an obligation for banks to serve their assessment areas and their entire community, including by requiring banks to provide a minimum amount of CD activities to be eligible to receive a rating of satisfactory or outstanding. However, as discussed below, the final rule does not set out a specific level of activity for the CD minimum.

v. Presumptive Ratings Benchmarks, Thresholds, and Minimums

The proposal would have established the empirical benchmarks for the average CRA evaluation measure[153] associated with each rating category, thresholds for passing the retail lending distribution tests, and a two percent minimum for CD activities as a percentage of retail domestic deposits.[154] The proposal set 11 percent as the initial CRA evaluation measures benchmark for outstanding, six percent as the initial benchmark for satisfactory, and three percent as the initial benchmark for needs to improve. An average CRA evaluation measure of less than three percent would have been associated with the substantial noncompliance rating category. The proposal set the benchmark for passing the retail lending distribution tests at 55 percent of the relevant demographic comparator and at 65 percent of the relevant peer comparator.

Commenters described the rationale for the proposed CRA evaluation measure benchmarks, CD minimum, and retail lending distribution tests thresholds as unclear and inadequate. Commenters expressed differing views on whether these benchmarks, minimums and thresholds would be difficult or easy to satisfy or whether they should be increased or decreased.[155] They argued that the agencies did not sufficiently describe the data, rationale, or methodology for the establishment of these thresholds, making it difficult to assess and comment on them.[156] Both community group and industry commenters recommended that the agencies disclose the data used to determine the benchmarks, thresholds, and minimums and recommended alternative numbers based on their own analyses. Community group commenters also recommended more gradations to encourage more CRA activity, address the high share of banks receiving satisfactory ratings, and develop more rigorous grading. Some industry commenters stated that the agencies were limited in their ability to leverage existing data to test the proposed performance standards and thus should not finalize the proposal at this time. Other commenters suggested the agencies issue a new proposal.

The proposed performance standards were based on analyses of currently available historical data, using some assumptions to estimate how banks would have performed from 2011 through 2017 under the proposal's framework. The historical data used was the best available data and included CRA PEs, Call Report data, FFIEC CRA data, HMDA data, and credit bureau data. The proposal clearly explained the sources used and the analysis methods and also acknowledged that data limitations existed for the purposes of determining the appropriate benchmarks. Commenters had sufficient access to the data utilized by the agencies in formulating the proposed benchmarks to enable meaningful comment on the proposed benchmarks. As discussed in the preamble to the proposal, the agencies were able to rely

[151] The agency notes that, actually, under the proposal, activities that serve a broader geographic region that includes one or more assessment areas would still have received some credit in those assessment areas, as described in the activity location section of the final rule.

[152] In particular, many commenters were concerned that banks would gravitate toward debt instead of providing investments, unless a separate CD investment minimum is established.

[153] The average CRA evaluation measure refers to the average of a bank's annual CRA evaluation measures for an evaluation period or the average of the bank's annual assessment area CRA evaluation measure for an evaluation period.

[154] The agencies used the FFIEC's CD lending data and CD investment data from a sample of over 200 CRA PEs from OCC-regulated banks completed between 2011 and 2018 to estimate the on-balance sheet value of all banks' CD activities as a proportion of retail domestic deposits in the sample of banks analyzed in 2017. This data set did not include estimates of qualifying municipal bonds or mortgage-backed securities. This analysis showed that the estimated median on-balance sheet value of CD loans and investments *divided by* retail domestic deposits in 2017 was 1.9 percent for banks with assets of $2.5 billion or more. The OCC also reviewed the publicly available Board data, which is based on a sample of CRA PEs. While it does not include all CD loans and investments or all retail domestic deposits because the data does not include information on all assessment areas, the OCC's analysis of the Board's data shows that the estimated median on-balance sheet value of CD loans and investment *divided by* retail domestic deposits was about 2.3 percent for banks with assets of at least $2.5 billion within a bank's evaluation period.

[155] For example, some industry and other commenters expressed concern that the CD minimum was set too high and may be difficult to achieve in some assessment areas, such as those where there is intense competition for CD activities, or for certain banks.

[156] Some commenters complained that the OCC relied on historical data without explaining why that was appropriate.

on this data to propose potential benchmarks and thresholds based on a reasonable range of potential benchmarks and thresholds and solicit comment. Over time, the data collection, recordkeeping, and reporting requirements in the proposal would have remedied the existing data limitations.

Although the OCC was not limited in its ability to leverage the existing data, the agency agrees that the existing data was limited, rendering the agencies' and commenters' choice of thresholds uncertain. While the proposed thresholds for each of the three components of the objective evaluation framework were reasonable, the agency believes it would be appropriate to gather more information and further calibrate the benchmarks, thresholds, and minimums. In addition, although the OCC issued a Request for Information (RFI) to gather additional information to assist in revising the thresholds and benchmarks in the proposal as appropriate,[157] the data that the OCC gathered in response was too limited to reliably calibrate these measures for all banks subject to the general performance standards. Accordingly, the final rule does not contain benchmarks for the CRA evaluation measure, a specific CD minimum, or thresholds for the retail lending distribution tests. The OCC has concluded it is appropriate to finalize each component of the objective evaluation framework contained in the proposal (with revisions as described above) and to separately gather more data and conduct further analysis to calibrate the benchmarks, thresholds, and minimums associated with each of the three components of the framework. The framework in the final rule is the product of the careful application of the OCC's supervisory experience and policy judgments, analyses of available data, and consideration of public comments. Finalizing the framework achieves the agency's goal of producing a more objective, transparent, and consistent way to evaluate CRA performance. The OCC will issue another Notice of Proposed Rulemaking shortly that will explain the process the agency will engage in to calibrate more precisely the requirements for each of the three components of the objective evaluation framework. After receipt and consideration of comments to another Notice of Proposed Rulemaking and additional data collection and analysis, the OCC will set specific benchmarks, thresholds, and minimums. The OCC still expects to periodically review and adjust these benchmarks.

Community groups criticized the proposal's lack of explanation for the statement in the preamble that the agencies expect to review the CRA evaluation measure benchmarks every three years and questioned how the agencies would adjust for economic cycles. Similarly, industry commenters expressed concern that the benchmarks would lag the economic cycle, as well as subject banks to political volatility. One industry commenter suggested a three-fold approach: (1) Providing banks the option to use benchmarks set shortly after their evaluation periods ended; (2) establishing dynamic thresholds that do not lag the market but are adjusted as infrequently as possible; and (3) using general downward adjustments during evaluation periods in the case of a market-altering event. A few industry comments included additional suggestions, such as providing banks with at least one full evaluation cycle of notice before applying higher benchmarks.

Although the OCC considered ways to adjust the CRA evaluation measures automatically to account for changing economic conditions, it did not adopt any such measures in the final rule because, depending on the nature of the circumstances affecting the banking industry, different adjustments might be necessary. Additionally, implementing dynamic adjustments to the CRA evaluation measures would sacrifice the certainty provided by establishing measures at the beginning of a bank's evaluation period. Further, all sources of data the OCC could use to make such adjustments would likely also be lagging indicators. Instead, the final rule would allow examiners to consider various external factors affecting a bank or all banks' ability to meet their CRA evaluation measures, including unanticipated market factors or economic disruptions, through the application of performance context factors prior to assigning a final rating. Banks would be subject to the performance standards in place at the beginning of their evaluation period, which the OCC believes provides banks with ample notice.

Small and intermediate bank performance standards. Under the proposal, small banks would not have been evaluated pursuant to the general performance standards that consider a bank's CRA evaluation measure and the retail lending distribution tests. Instead, small banks would have continued to be evaluated according to the small bank performance standards applicable to small banks that are not intermediate small banks in the current CRA regulations, including the currently retail lending distribution tests, unless they were evaluated under an approved strategic plan or elected to opt into the general performance standards. Performance context factors and discriminatory and other illegal credit practices would have continued to be considered in evaluating a small bank's performance. The proposal's definitions of qualifying loans and CD services also would have applied to small banks. Small banks that engaged in qualifying activities as described in the proposal would have received consideration for those activities to the extent that they were consistent with the small bank performance standards and Appendix A. Small banks also would have been subject to the proposal's changes to the assessment area delineation requirements and would have been required to delineate deposit-based assessment areas to the same extent as other banks. In addition, under the proposed framework, small banks would have continued to refer to relevant guidance in the *Interagency Q&As* and existing policies and procedures, including with respect to state and multistate metropolitan statistical area (MMSA) ratings.

Some commenters were concerned that by raising the small bank threshold to include banks that are currently intermediate small banks the agencies would not encourage those banks to engage in CD activities. That is not the case. Although the proposed small bank performance standards did not include a separate CD test, banks subject to the small bank performance standards would have been able to engage in such activities. Under the current small bank performance standards that the proposal carried forward, as explained in *Interagency Q&As,* if a small bank performs any CD lending or CD lending-related investment activities, those activities are considered during the evaluation of the bank's performance. As stated in Appendix A of Part 25, all CD investments, even those that are not lending related, are considered in assessing whether a bank's performance is outstanding. The proposal would not have changed the current approach to evaluating small bank performance. However, to clarify that to the extent that small banks can and do conduct CD lending and CD lending-related activities, such activities will be looked upon favorably in CRA evaluations, the OCC revised the final rule to change lending-related activities to retail and community development lending-related activities. Other than this

[157] *See* 85 FR 1285 (Jan. 10, 2020).

change, the OCC finalized the small bank performance standards as proposed. The OCC finalized Appendix A as proposed because it specifically mentions that all CD investments are considered in assessing whether a bank's performance is outstanding.

The final rule also reintroduced the intermediate small bank performance standards used in the current framework, with one change. Intermediate small banks are now called intermediate banks to achieve better clarity in terminology; however, they will be evaluated in the same manner as intermediate small banks are currently. In addition, both intermediate and small banks can continue to refer to relevant guidance in the *Interagency Q&As* and existing policies and procedures, including with respect to state and MMSA ratings.

Other than the changes explained above and technical and conforming edits, the small bank provisions are adopted as proposed. In relation to the addition of the intermediate bank provisions and changes to the small bank provisions, the agency has made conforming changes throughout the final rule.

Wholesale and limited purpose banks. The proposal did not carry forward the separate performance standards for wholesale and limited purpose banks that are in the current rule. Commenters objected to this approach and stated that wholesale and limited purpose banks have been appropriately granted distinct CRA treatment in the past 25 years because their business models can differ markedly from most other banks. These commenters noted that designation as a wholesale bank means that the bank cannot be in the business of extending home mortgage, CRA-eligible business, CRA-eligible farm, or consumer loans to retail customers, but these wholesale banks may engage in limited retail lending on an accommodation basis. For designation as a limited purpose bank, an institution must offer only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market. The commenters asserted that it is inappropriate to apply the general performance standards to these banks and that the agencies should continue to apply the wholesale and limited purpose performance standards in the current rule because those standards appropriately assess the CRA performance of these banks.[158]

Although the proposal adopted a more streamlined approach to CRA that the OCC believed was flexible enough to accommodate all types of banks, the agency acknowledges commenters' concerns about wholesale and limited purpose banks. The OCC agrees that the current wholesale and limited purpose performance standards provide an effective framework to evaluate the CRA performance of those banks. The final rule exempts these banks from the general performance standards and carries forward the performance standards for wholesale and limited purpose banks that are in the current rule.[159]

In relation to the addition of the wholesale and limited purpose bank provisions, the agency has made conforming changes throughout the final rule.

Performance context. The proposal set forth performance context factors that the agencies would have considered in determining a bank's assigned rating and assessment area assigned ratings. Banks subject to the general performance standards would have submitted performance context information in a standardized format using a form on the agencies' websites to address the performance context factors. In addition, the agencies would have established evaluation procedures to help ensure that examiners applied performance context factors consistently. The performance context factors would have focused on the capacity of the bank to engage in qualifying activities, as well as both the demand for and the opportunity to engage in qualifying activities in the communities that the bank serves.

Some community group commenters voiced concerns that public comments would be considered in a constrained manner under the proposal. These commenters stated that the proposal did not expressly provide that the public could comment on banks' CRA performance. These commenters also observed that the agencies did not discuss whether they would facilitate public comments.

The final rule ensures that the OCC will be able to gather and assess valuable written public comments about local needs and opportunities submitted to a bank or the evaluating agency as a part of applying performance context factors. As these comments are considered prior to the issuance of CRA ratings, the rule does not diminish the impact of public comments on CRA performance ratings. With respect to submissions of these comments, the OCC will continue to explore technological and other methods to facilitate these submissions.

Some community groups stated that performance context factors should identify community needs through analysis of economic and demographic data, as well as community comments.[160] The OCC agrees and notes that the proposal provided for this type of identification of community needs both directly and indirectly through several performance context factors. Because of the diversity of the banking industry, however, a one-size-fits-all approach to community engagement does not exist. There are currently many methods of assessing the local demand for qualifying activities and the available opportunities to satisfy this demand by engaging with their communities. For instance, banks may sponsor events, forums, and other activities where community organizations, such as religious organizations, CDFIs, CD practitioners, and housing-related non-profits, can attend and provide feedback on local needs and opportunities. Banks may also respond to written comments from community stakeholders on different qualifying activity opportunities that arise or conduct demographic and economic research on finance needs in their community. Finally, banks may look to reliable sources that articulate local needs and opportunities based on interactions with the community and other types of research.

Two examples of such reliable sources include the Federal Home Loan Banks' Targeted Community Lending Plans (FHLB TCLPs) and local or state Consolidated Plans submitted to HUD for community planning and development programs.[161] FHLB TCLPs, which were referenced in the proposed regulation text, evaluate community lending and affordable housing needs, reflect market research conducted in and localized to a FHLB's district, and are developed in consultation with the FHLB's Advisory Council, members, housing associates, and public and private economic development organizations in the FHLB's district.[162] Each FHLB Advisory Council has 7 to 15 persons drawn from community and non-profit organizations actively involved in providing or promoting LMI

[158] One commenter additionally noted that the strategic plan option is a poor fit for banks that currently are designated as wholesale banks.

[159] Based on the agency's determination that the final rule will only consider activities conducted by a bank, the final rule does not carry forward the provision on affiliate activities in the current framework's community development test for wholesale and limited purpose banks.

[160] Community group commenters also advocated for requiring banks to meet with community groups or other stakeholders and specifically suggested recognizing community benefits agreements for identifying community needs.

[161] 12 CFR 1290.6(a)(5); 24 CFR part 91.

[162] 12 CFR 1290.6(a)(5).

housing in the district.[163] HUD Consolidated Plans, which the agency has added as an example in the regulation text as a source that identifies local needs and opportunities, provide information on the local or state jurisdiction's estimated affordable housing and CD needs and market conditions based on U.S. Census data, local studies, consultation with social service agencies, and other public input.[164] The final rule was revised to refer to both the FHLB TCLPs and HUD Consolidated Plans and to clarify that these plans are only examples of two reliable sources that articulate local needs and opportunities.

The OCC recognizes the value of banks' engagement with their communities. Community engagement enables banks to better determine and understand local needs and the availability of local opportunities to address these needs. The agency encourages banks to actively engage their communities in a manner commensurate with the banks' size, scope of activities, capacity, and resources. The final rule evaluates the effectiveness of a bank's engagement with its community, regardless of its method of engagement, as a part of the application of performance context factors. The agency will assess the responsiveness of a bank's qualifying activities to local needs, as well as the innovativeness, complexity, and flexibility of these activities; the availability of market opportunities to meet the local needs; and written comments about local needs and opportunities submitted to the bank or the OCC.

Some community groups and a few members of the public recommended lowering ratings if banks finance activities that cause displacement or other harm. The OCC agrees that it is important to consider both positive and negative qualitative aspects of a bank's CRA performance. Accordingly, certain qualifying activities criteria require that a bank demonstrate that its activities benefit or serve a targeted population, entity, or areas. Further, the rule considers the responsiveness of a bank's qualifying activities to local needs as part of the application of performance context factors. Lastly, as discussed below, the rule retains consideration of discriminatory and other illegal credit practices, which also can result in downward adjustments to ratings.

Many commenters expressed concern that the proposed CRA evaluation measure would not appropriately capture qualitative factors, such as the responsiveness of an activity to certain local needs. Although the proposed framework did not assign an explicit value to qualitative factors, such as the responsiveness of an activity, it would have evaluated these factors through the application of performance context factors. Although the OCC continues to believe that the application of performance context factors is the appropriate place to evaluate these and other qualitative factors, as discussed above, the final rule also adds a multiplier of up to four times an activities' quantified dollar value based on the OCC's determination of the activity's responsiveness, innovativeness, or complexity.[165] Although the proposed framework was designed to bring clarity and consistency to the agency's evaluation of a bank's CRA performance, it also sought to provide flexibility for a bank to engage in the CRA activities most appropriate for its unique context. The OCC and commenters agree about the importance of assessing qualitative factors. The OCC believes that framework in the final rule that allows multipliers for some qualitative factor along with providing for some qualitative application of examiner judgment in a more systematic manner is the best approach. Accordingly, the final rule will continue to assess qualitative factors, like responsiveness, through the application of performance context factors and allows for the application of multipliers for qualitative factors in some cases.

Some industry commenters asked for the agency to clarify how performance context factors would be factored into the proposed CRA benchmarks and associated ratings and how banks can provide the information on the relevant factors. Other industry commenters suggested that the performance context factors should only be additive to a bank's overall CRA score, as a downgrade would defeat the purpose of a quantitative system or should not be required if a bank was satisfied with its presumptive rating. Community group commenters expressed concern that the proposal did not sufficiently value performance context factors. Some community group commenters stated that the proposal's discussion of performance context factors suggests that it would be used mainly to excuse banks' failure to hit the targets.[166]

As proposed, no element of performance context factors would have had a predetermined weight and consideration of performance context factors could have resulted in examiners adjusting a bank's rating upwards or downwards. To provide clarity, the proposal set forth the criteria the agencies believed generally affect a bank's ability and opportunity to engage in qualifying activities. The agencies would have also considered the responsiveness, innovativeness, and complexity of a bank's qualifying activities. Due to the wide variety of factors and circumstances that may affect bank performance or opportunities, the OCC continues to believe that it is important to allow examiners to assess these specific qualitative factors by applying performance context factors for the bank and in each assessment area. Accordingly, other than the changes described above, OCC has adopted the performance context section as proposed. However, the OCC plans to issue guidance to examiners to promote consistent application of the performance context factors.

Discriminatory or other illegal credit practices. As proposed, the agencies' evaluation of a bank's CRA performance would have been adversely affected by evidence of discriminatory or other illegal credit practices. Specifically, in assigning a CRA rating, an agency would have first evaluated a bank's performance for the applicable time period and then made any adjustments to the presumptive rating that would have been warranted based on the application of the performance context factors, as described above, and any evidence of discriminatory or other illegal credit practices, consistent with the agency's policies and procedures.

Commenters expressed differing views on the appropriate effect of discriminatory or other illegal credit practices on banks' ratings. Some commenters requested additional information on the effect of evidence of discriminatory or other illegal credit practices on bank ratings. Such

[163] 12 U.S.C. 1430(j)(11).

[164] 24 CFR 91.205, 91.305.

[165] At least one community group commenter thought that the range of retail banking services should not be evaluated in performance context because it asserted that the application of performance context factors is largely bank driven. As described in the preamble to the proposal, the agency plans to issue additional guidance for examiners on how to evaluate the performance context factors in the final rule, including how to evaluate the range of retail banking services.

[166] Industry and community group commenters also suggested different elements that could be considered as part of performance context, such as (1) a bank's free retail banking services; (2) a bank's affordable housing activities; (3) a bank's available loan terms and conditions; (4) the unique issues related to military-base banks; (5) a standard for measuring diversity and inclusion; and (6) specified CD activities. The OCC notes that most of these elements are covered by the performance context factors in the proposal and the final rule.

evidence, whether within or outside an assessment area, affects bank ratings under the final rule. An assessment area rating only considers evidence of discriminatory other illegal credit practices that occur within the assessment area. This rule does not change the OCC's policy for determining the effect of evidence of discriminatory or other illegal credit practices on the CRA rating of a bank. Several commenters suggested that the agencies apply additional scrutiny and bolster reviews for evidence of discriminatory, abusive, predatory, or otherwise illegal credit practices in connection with evaluations of banks' CRA performance, such as by including quantitative analysis of lending to communities of color and more detailed descriptions of banks' compliance with anti-discrimination and consumer protection laws. One commenter suggested that CRA evaluations should ensure that communities of color have fair access to the banking system. Two community groups recommended that the agencies retroactively downgrade CRA ratings when fair lending examinations find violations that occurred during a prior period and that the agencies wait to issue CRA ratings and approve licensing applications until the completion of ongoing fair lending examinations.

The OCC assesses and examines banks for compliance with consumer protection laws and regulations as part of its ongoing supervisory activities and takes such action as may be appropriate under the applicable laws and regulations to address any deficiencies or violations.[167] As in the past, the OCC will continue to take evidence of discriminatory or other illegal credit practices into account in evaluating CRA performance. Depending on the circumstances, a bank's assigned rating may be lower than its presumptive rating due to such evidence. After considering the comments, the agency is finalizing the discriminatory and other illegal credit practices section as proposed. The OCC will apply its current policies and procedures regarding the consideration of discriminatory and other illegal credit practices.

Strategic plans. Under the proposal, a bank would have had the option to develop a strategic plan for addressing its CRA responsibilities and to be evaluated based on its performance under the plan. Under the proposal, a bank's strategic plan would have been developed with public participation and would have included measurable goals for helping to meet the credit needs—particularly the needs of LMI census tracts and individuals—of its assessment area(s) and entire community through qualifying activities.

Some industry commenters stated that the proposal's strategic plan option appeared to be limited to larger or non-traditional banks and recommended that the agencies make this option more accessible to all banks. The OCC believes that these commenters may have misunderstood the availability of the strategic plan option. This option is open to all banks, not just larger or non-traditional banks. However, as performance context factors will be applied for all banks under the general performance standards, and the final rule includes separate performance standards for small, intermediate, wholesale, and limited-purpose banks, there may be only limited circumstances where strategic plans will be beneficial to banks.

Some commenters also recommended exempting strategic plan banks from the assessment area requirements of the general performance standards. Allowing banks to propose the areas where they are evaluated without any constraints would cause great uncertainty in CRA evaluations. Banks evaluated under the strategic plan option are subject to the same statutory provisions that require the OCC to evaluate performance in certain geographic areas. For these reasons, the OCC has decided to not exempt strategic plan banks from the assessment area requirements. However, the rule does not otherwise tie the evaluation of a strategic plan to evaluation under the general performance standards. The strategic plan option provides flexibility but does not result in lower expectations for bank performance.

Some industry commenters requested guidance on how to draft strategic plans.[168] Since there is more than one appropriate way to draft a strategic plan, the OCC plans to provide general guidance for banks on this issue. However, the OCC notes that each strategic plan should be tailored to the unique characteristics and needs of the bank.

Some industry commenters expressed concern that the nine-month timeframe for regulatory approval of a strategic plan is too long. These commenters recommended that the timeframe should be revised to 90 days with a potential 30-day extension for good cause. They also stated that amendments to strategic plans should be approved within 90 days and that absent a change in business model, strategic plans up for renewal should always be approved. The OCC notes that the timeframe for regulatory approval of a strategic plan in the proposal was six months. The agency agrees that the timeframe for approval of a strategic plan can and should be shorter. The final rule states that the OCC will determine whether to approve strategic plans within 90 days with an option for one 30-day extension for good cause. Further, absent a change in business model or other material circumstances, the agency expects that applications for renewals of strategic plans that have previously been approved under this final rule will be approved.

In light of the reintroduction of the wholesale and limited purpose performance standards, the final rule also eliminates the requirement that small banks that do not engage in retail lending submit a strategic plan, as these banks can now receive a wholesale bank designation. Other than these changes and other technical edits, the OCC has finalized the strategic plan section as proposed.

Assigned ratings. The OCC largely adopts the assigned rating sections as proposed, with clarifying edits to accommodate the addition of the intermediate size category and the inclusion of separate performance standards for wholesale and limited purpose banks. The final rule also rectifies an inadvertent omission in the proposal by clarifying that the agency will consider any evidence of discriminatory or other illegal credit practices when assigning ratings for banks evaluated under a strategic plan. The final rule also clarifies that state or MMSA ratings will be assigned based on the ratings assigned to the assessment areas within that state or MMSA. The OCC plans to provide additional guidance to examiners about how to assign those ratings.

Conforming, clarifying, and technical changes. Other than the changes explained above and technical, clarifying, and conforming edits, the agency is the performance standards as proposed.

[167] In some instances, regulatory agencies other than the OCC may have supervisory and/or enforcement authority with respect to the law or regulation at issue. For example, the Consumer Financial Protection Bureau has supervisory and primary enforcement authority under Equal Credit Opportunity Act for insured depository institutions with more than $10 billion in total assets. 12 U.S.C. 5481(12)(D), 5481(14), and 5515(a)(1).

[168] One industry commenter suggested incorporating existing strategic plan guidelines. The OCC expects to leverage existing guidance to the extent practicable.

D. Data Collection, Recordkeeping, and Reporting

Today's CRA regulatory framework results in CRA PEs that can be in excess of 1,000 pages. Current CRA PEs are difficult to read and use and make it challenging to draw comparisons from bank to bank or from one bank evaluation period to the next. By defining qualifying activities consistently and making CRA evaluations more objective, the proposal would have enabled examiners to produce more standardized CRA PEs in less time than the current framework. More systematic and standardized information would enable the OCC to assess the level of qualifying activities being conducted by banks. More complete and accessible information will improve and accelerate decision making for regulators and stakeholders.

Greater transparency through more comparable and timely data and information will increase accountability by ensuring that ratings are more accurate reflections of the level of CRA activities that banks conduct. Common definitions and better data over time will allow the OCC to adjust the thresholds and benchmarks for delineating deposit-based assessment areas and the levels of performance necessary to achieve certain rating categories. Objective measures, reported in a transparent manner, will allow banks to assess performance and progress.

Consequently, the final rule includes enhanced data collection, recordkeeping, and reporting requirements to support the new CRA regulatory framework. Like the proposal, the final rule includes data collection and reporting requirements for banks evaluated under the general performance standards or a strategic plan and separate requirements for banks evaluated under the small bank performance standards. The final rule also adds separate requirements for the reintroduced categories of intermediate, wholesale, and limited purpose banks.

Data collection for banks evaluated under the general performance standards or a strategic plan. As set forth in the proposal, a bank evaluated under the general performance standards or a strategic plan would be required to collect and maintain a variety of data about its qualifying activities and where each activity took place. Some industry commenters and community groups expressed concerns that these proposed requirements would necessitate the development and implementation of costly new data systems for information that banks may not currently collect or have direct access to, with industry commenters noting that costs associated with information collection would outweigh benefits.

The OCC recognizes that there are costs associated with the final rule's data requirements—both the upfront costs of developing and implementing new systems and the costs of ongoing data collection and maintenance. The clarity and certainty provided to banks by the final rule will offset these costs and the added benefit to the banks and stakeholders warrants such additional costs. Third-party service providers may also be able to help banks meet these new data-related requirements in a cost-effective manner due to their economies of scale. Furthermore, certain changes to the proposed qualifying activities, assessment areas, and performance standards adopted in the final rule will likely reduce the costs of the new framework's data requirements. The data that banks will collect under the final rule may also provide them with non-CRA-related benefits, for example, by providing them with new information about, and insights into, the communities they serve as well as the activities of peers and the broader industry.

A few commenters expressed concern regarding how the OCC will address data integrity issues and made certain requests and recommendations, including that the agency provide safe harbors, clarifying accuracy expectations, and not use data inaccuracies as a basis for rating a bank less than satisfactory. One commenter recommended that the agency provide a means for offsetting the costs associated with data retention and provide a work-through period in data retention to avoid overly burdensome immediate impacts. The OCC believes that the long-term benefits will outweigh the costs.

A few industry commenters also expressed concerns about the cost of collecting data on consumer loans because banks may not have the physical addresses associated with the loans. The OCC recognizes that consumer loans present unique data challenges. To address these concerns, under the final rule, credit cards are no longer included in a bank's CRA evaluation. Having removed credit cards from the definition of consumer loan, the OCC determined that it was appropriate to simplify the compliance dates, as discussed below.

Industry commenters sought clarity on the frequency of the proposal's deposit data collections. The commenters stated that the proposed requirement that banks collect and maintain information on the value of each retail domestic deposit account at the end of the quarter and the physical address of each depositor would require that this data be captured, validated, retained, and not modified during the entire evaluation period. To do this, banks would likely have to move the data out of one system and into another, which commenters noted was not something that most banks currently do and would be costly to implement. Some commenters also voiced concerns that capturing depositors' physical address every time they move would be costly.[169] Other commenters remarked that the proposal's requirement to geocode at the census tract level would require the manual coding of some accounts. These commenters suggested that even a revision enabling banks to geocode deposit accounts to the county level would difficult, especially for small banks. A few commenters provided suggestions for reducing the burden associated with geocoding, including: (1) Using system reports based on zip codes to identify retail domestic deposits within and outside assessment areas; (2) providing a developed process to enable banks to make this determination; (3) allowing banks to use the address provided at account opening or the address on file, even if that address is a P.O box; (4) correlating deposit account addresses to counties or assessment areas; (5) geocoding retail domestic deposits only on an as-needed or annual basis, or in response to a triggering event; or (6) providing exemptions in certain circumstances for maintaining geocoded retail domestic deposit data.[170]

The agency appreciates these concerns. However, to implement the performance standards adopted in this final rule, which will enable the agency to better assess banks' CRA performance to serve their entire communities, the OCC needs to know, as of the end of each quarter, the value of a bank's retail

[169] Although the USA PATRIOT Act requires that a bank collect the physical address for a new depositor, accounts opened prior to 2001 without this information were grandfathered. Public Law 107–56, 115 Stat. 272 (2001). Some of these accounts may still be missing this information.

[170] Two industry commenters requested confirmation that banks could rely on the physical address provided by the depositor without additional verification. The OCC confirms that banks may rely on the physical address provided by the depositor. Another commenter sought clarity on the frequency of retail deposit data collection and reporting. The final rule requires quarterly collection of the value and the physical address and associated Federal Information Processing Standards (FIPS) code for each retail domestic deposit account. Banks will have to report their average quarterly retail domestic deposits annually.

deposit account and the physical address of each depositor. Furthermore, the agency does not believe that the new data collection requirements will be as burdensome as industry commenters suggest because banks are generally already collecting much of this data in the ordinary course of business, although it may not be contained on the same systems. For these reasons, the final rule adopts these provisions generally as proposed, but clarifies that retail domestic deposit accounts need to be geocoded to the county level, not the census tract level, because the county is the smallest permissible assessment area under the final rule. As provided in the final rule, the OCC will prescribe the machine-readable form for collecting and maintaining CRA data, and the OCC plans to provide further detail on the data that banks must collect and maintain.

With respect to the proposed requirement that banks collect and maintain certain balance sheet information, industry commenters were generally opposed to this provision, although some expressed a willingness to collect and maintain this information on CD activities. The agency notes, however, that the on-balance sheet values required to be collected and maintained in the final rule will provide the OCC with an important measure of a bank's qualifying activities. Because the performance standards in the final rule include consideration of this data, the final rule also retains the requirement for banks to collect and maintain this information.

As proposed, banks subject to the general performance standard would have to collect, maintain, and report their presumptive ratings and the results of their CRA evaluation measure calculations and retail lending distribution tests. The proposal did not require that banks collect, maintain, or report the results of their CD minimums calculations, which were also a component of the general performance standards. Commenters suggested that the final rule should include data collection, recordkeeping, and reporting requirements for the CD minimums. The final rule includes data collection and recordkeeping requirements for banks' CD minimum calculations and the supporting documentation associated with these calculations.

Certain industry commenters noted that the proposal is unclear about how to treat a bank's existing book of business. Commenters further noted that much of the information required by the proposal, such as addresses or income information, may not have been gathered for loans that are already on banks' balance sheets or may have been gathered at too remote a time to be relevant. Accordingly, the retroactive application of requirements to measure a bank's current portfolio would be challenging. In response to these concerns, the agency is grandfathering activities that would have received positive consideration in a CRA evaluation under the current framework and are on a bank's balance sheet on the effective date of the final rule, other than home mortgage loans and consumer loans provided to middle- and upper-income individuals in LMI census tracts. Grandfathered activities will be considered qualifying activities for purposes of calculating the bank's CRA evaluation measure but will be subject to more limited data collection, recordkeeping, and reporting requirements, discussed below.

Regarding retail lending data, industry commenters and community groups recommended that the OCC use existing datasets and reporting structures, such as those related to HMDA data, rather than create a new framework. HMDA data would not provide the OCC with the information it needs for purposes of evaluating CRA performance. First, many banks subject to CRA are not HMDA reporters. Second, HMDA data only includes information about the origination value of home mortgages and does not contain the on-balance sheet value of these loans needed under the final rule's performance standard framework. The OCC needs banks to collect and maintain this on-balance sheet information to implement the framework in the final rule.

A community group noted that if qualifying activities data includes multipliers, stakeholders will be unable to assess whether CRA activity is increasing and the needs of local communities are being met. Consistent with the proposal, the final rule requires banks to collect and maintain the quantified dollar value of activities before applying multipliers. The final rule also adds a requirement that banks collect and maintain an indicator of whether a multiplier applies. Therefore, the final rule will provide all stakeholders with more transparency regarding banks' CRA activities than exists today. In addition, multipliers will not apply to CD activities unless a bank maintains approximately the same level of CD activities as in the prior period.

One industry commenter noted that increasing the size of small loans to businesses and farms will result in the corresponding Call Report codes no longer capturing all loans that qualify for CRA credit and suggested that the OCC develop a new method to obtain information about these loans. The OCC recognizes that the new framework will not align with other existing data reporting requirements and processes but the benefits of clarity and transparency regarding CRA activities provided by the final rule outweighs the costs of maintaining and reporting data. Additionally, as discussed above, the framework in the final rule provides banks the flexibility to treat qualifying small loans to farm or qualifying small loans to businesses that also qualify under a CD criterion as CD loans for purpose of meeting the CD minimums.

A few industry commenters argued that the proposal's requirement that banks collect non-qualifying home mortgage and consumer loan origination data, should be removed in the final rule.[171] The final rule retains this provision, however, because the agency needs this information to conduct a bank's retail lending distribution test and to determine the appropriate peer comparators for those tests. Furthermore, although the proposal would not have required banks to collect data on non-qualifying small loans to businesses and small loans to farms, the final rule extends the data collection requirements to include these loans because this data is needed to evaluate bank performance, conduct a bank's retail lending distribution test, and determine the appropriate peer comparators for those tests.

The final rule includes other revisions to the data collection provisions. Specifically, to ensure that the OCC can validate banks' retail lending distribution tests, CRA evaluation measures, and presumptive ratings, banks must collect and maintain supporting documentation related to these calculations. The final rule also requires that banks collect, maintain and report information on the number of home mortgage loans originated in LMI census tracts. In addition, the final rule reduces the length of time that banks must maintain data by providing that data must be maintained until the completion of the relevant CRA evaluation.

A few industry commenters expressed concerns regarding the proposed requirements to collect, maintain, and report data on CD services, citing concerns that the costs of doing so

[171] Another commenter expressed concern that the proposal would require banks to collect and maintain information on denied consumer loan applications. The OCC notes that the final rule does not require banks to collect information on denied consumer loan applications.

would outweigh any CRA benefit.[172] The final rule's CD-related data collection, recordkeeping, and reporting requirements are necessary to assess and validate banks' CRA performance under the revised framework. Nonetheless, the OCC acknowledges the burden issues raised by commenters. The final rule revises the treatment of CD services as suggested by commenters to use a standard for the median hourly compensation value for the banking industry based on Call Report data for (1) median salaries and employee benefits from Schedule RI, Item 7.a; and (2) the median number of full-time equivalent employees from Schedule RI Memorandum Item 5.

Other commenters suggested that the agencies increase data collection related to retail banking services, in part to determine whether products and services are affordable. The agency is not including additional data collection related to retail banking services in the final rule, but it notes that banks are required to report performance context information.

One industry commenter noted that the frequency of the data collection, recordkeeping, and reporting requirements did not match the six-month review period for the qualifying activities list confirmation process, which is reduced to 60 days in the final rule. The data requirements and the qualifying activities confirmation process serve different purposes and the applicable periods would not necessarily begin at the same time, making alignment unnecessary.

One industry commenter requested that the OCC clarify that the banks can use the address of the account holder of record as the address for an omnibus or intermediate deposit account. Another industry commenter requested clarify the information and documentation needed for CD loans. The final rule requires banks to collect and maintain supporting documentation. The agency notes that banks bear the burden of establishing that qualifying activities are eligible for CRA credit and the information they collect will permit the OCC to confirm the activities' eligibility. The OCC will provide additional guidance on the final rule's data collection requirements related to the general performance standards and the other performance standards discussed below.

In addition to the changes discussed above, the final rule includes conforming and technical changes throughout the data collection section, but this section is otherwise adopted as proposed.

Evaluation under the wholesale and limited purpose bank performance standards. The final rule maintains the wholesale and limited purpose bank performance standards from the current framework, while making the expanded qualifying activities criteria in the new qualifying activities section applicable to those banks. The final rule requires banks evaluated under the wholesale and limited purpose performance standards to collect and maintain information about CD activities, including an indication of which new qualifying activity criteria these activities satisfy. These banks will also be required to collect and maintain information on retail domestic deposits, including the physical address of the depositor, and their assessment areas. This data collection is necessary to ensure that the OCC has the information required to evaluate banks' CRA performance.

Evaluation under the small and intermediate bank performance standards. As proposed, banks evaluated under the small bank performance standards were generally exempt from the data collection, recordkeeping, and reporting requirements except they would have been required to collect and maintain information on retail domestic deposits, including the physical address of the depositor. These requirements were included in the proposal to determine whether a bank was required to delineate deposit-based assessment areas and allow the agencies to validate those determinations. The proposal sought comments on whether there were other ways to limit the recordkeeping burden on small banks.

In response, some industry commenters stated that small banks should be exempt from the retail domestic deposit data collection and recordkeeping provisions in the proposal because of the burdens associated with this provision. Some community groups opposed allowing small banks to opt out of the deposit-related data collection and record-keeping requirements. The OCC believes that the proposed data collection and recordkeeping requirements for small banks evaluated under the small bank performance standards are appropriate, and the final rule adopts them as proposed and applies them to intermediate banks. Reporting small or intermediate bank retail domestic deposit data is not necessary because the OCC will validate assessment area delineations during evaluations. Therefore, the final rule does not impose any reporting requirements on banks evaluated under the small bank performance standards.

Data collection for grandfathered activities. Some industry commenters requested additional clarity on the treatment of a bank's existing book of business under the proposal. These commenters noted that the data required to be collected under the proposal may not have been gathered at origination for these loans, or that it may have been gathered at too remote a time to be relevant. The agency recognizes that identifying qualifying on-balance sheet activities may be burdensome. The final rule provides for grandfathering of existing on-balance sheet activities that either qualified in previous CRA evaluations or would have qualified under the current CRA framework. For grandfathered qualifying activities, the final rule includes only the data collection requirements necessary to determine the quantified dollar value of those activities. The agency expects that banks will identify on-balance sheet activities that would not qualify under the current CRA framework but qualify under this final rule based on the information that was or would have been gathered at the time of origination. Although there may be some data collection burden associated with the look back process for activities that now qualify for CRA credit, the agency anticipates that this look back will not be overly burdensome because full compliance with the new regulations will not be required until January 1, 2023, and the number of these now qualifying activities will likely be very small.

Activity Location. The proposal set forth provisions explaining how banks would determine the location of an activity for purposes of the data collection requirements. Industry commenters suggested alternatives for determining the location of certain activities with a broad geographic focus. The final rule does not revise the treatment of activity location. The agency believes that banks should get credit in their assessment areas for activities that serve or benefit their assessment areas because this is most consistent with the statutory purpose of CRA. For purposes of determining activity location, qualifying activities that are not conducted within assessment areas will receive credit in a bank's qualifying activities value and not in any bank assessment area qualifying activities value. Qualifying activities that are partially allocated to an assessment area will receive CRA credit in the bank's qualifying activities

[172] Other commenters suggested that the tracking of CD service hours be optional.

for the amount of the activity that is not allocated to another assessment area.

One industry commenter suggested that banks use the FFIEC website for geocoding and that banks should not be expected to conduct further research. The final rule's performance standards require banks to identify the location of their loans and other activities but do not specify the method of geocoding. If a bank cannot identify the location of its qualifying activities it will receive credit for those activities in its bank CRA evaluation measure.

One industry commenter requested clarification as to whether the rule requires aggregate or separate collection and reporting of LMI categories. The OCC confirms that data collected for LMI census tracts may be aggregated because the rule does not separately evaluate low-income and moderate-income tracts for performance standards purposes.

The agency is adopting these provisions as proposed, with a minor change to clarify that banks are expected to record the location of a consumer loan at the time of origination.[173] As explained above, under the final rule, a bank would not be expected to track, over time, the borrower's income or other qualifying criteria or re-classify qualifying activities as non-qualifying if income or other qualifying criteria change.

Finally, some industry commenters recommended that the agency clarify the data collection requirements for CD activities that serve multiple locations. The agency will provide guidance to further clarify these requirements.

Recordkeeping. As with the proposal, the final rule will require banks to collect and maintain all necessary data in machine readable form. To facilitate compliance with the data collection and record-keeping requirements, the OCC will provide additional guidance on the specific data points that a bank will need to collect and maintain and the format in which the data will need to be recorded. One industry commenter requested confirmation that CRA data may be maintained in any system and provided in any machine-readable format. The final rule requires banks to maintain the data in machine readable format, as prescribed by the OCC, to ensure the validity and integrity of the data. The agency made conforming revisions in the final rule to apply the recordkeeping requirements to intermediate, wholesale, and limited purpose banks. The final rule otherwise adopts the recordkeeping section as proposed.

Data reporting. The proposal required banks evaluated under the general performance standards to report to the OCC some, but not all, of the CRA-related data that these banks are required to collect and maintain. Community groups recommended, instead, that all CRA-related data that banks collect and maintain should be reported and made public. Several commenters recommended county-level, or ideally census tract-level, reporting of CD activities, retail lending, and deposit data. These commenters were concerned that the limited public data in the proposal would not provide the public with enough information about banks' CRA performance. With respect to concerns that the final rule will not make enough CRA-related information available to the public, the agency notes that all facts and data supporting the agency's conclusions and ratings will continue to be available in banks' publicly available CRA PEs. The OCC is committed to improving transparency under the CRA and, as it accumulates data over time, will work to develop aggregate reporting of activities by various geographies, while ensuring that confidential supervisory information, confidential commercial information, and personally identifiable information are appropriately protected. At this time, however, the final rule does not adjust the scope of the public data reporting. As with any other rule, the agency will issue guidance as part of the administration of the rule to provide clarity on when banks will have to report data to the agency.

One industry commenter recommended that the agency make reporting of presumptive ratings optional, rather than mandatory. The agency notes that the purposes of the new framework include enhanced transparency and tracking of CRA activity. Therefore, the final rule continues to require reporting of presumptive ratings, which will be validated by the OCC examiners.

One industry commenter stated that the reporting requirements for contingent commitments to lend were unclear and recommended reporting the commitment rather than the outstanding amount. The final rule, like the proposal, requires reporting of the quantified dollar value of qualifying loans and CD investments. As described above, the quantified dollar value of certain commitments to lend and legally binding commitments to invest is the full amount of the commitment. Other commitments to lend are quantified based on any on-balance sheet amount plus the allowance for credit losses related to the commitment itself.

After considering these and other comments, the agency is adopting the reporting requirements as proposed, with a few changes. The final rule requires banks to report the results of their retail lending distribution tests and their presumptive ratings at the end of the evaluation period, not annually as proposed, in recognition of the fact that banks cannot determine the test results and presumptive ratings until the end of the evaluation period. The final rule also clarifies that banks will only have to report performance context information prior to their CRA evaluations.

A few industry commenters made recommendations related to the method of reporting information including suggesting that the agency create portals or spreadsheets to assist banks with these requirements. The OCC will provide banks with a reporting form to assist them in meeting these requirements.

Several industry commenters stated that it was unclear whether over- or underreporting would result in penalties, and one commenter suggested that the agency incorporate aspects of the current framework that do not contemplate penalties regarding CRA data. The OCC notes that the CRA is designed to encourage banks to engage in activities. The agency will work with banks to ensure accuracy of reported data but, as with the current framework, the agency does not contemplate penalties regarding CRA data, especially since the CRA statute does not provide a basis for OCC enforcement actions.[174]

One industry commenter argued that any reporting or disclosure requirements that do not serve a specific purpose under the new framework, such as activities that do not count toward the CRA evaluation measure, would violate the Paperwork Reduction Act. The agency notes that all the information required by the data collection, recordkeeping, and reporting requirements is needed to determine and validate bank performance.

Industry commenters also sought clarification regarding aspects of the reporting requirements. The agency confirms that banks must report qualifying donations, which are included in the quantified dollar value of their CD investments. The agency also notes that more detailed reporting of originated loans is required for the

[173] The agency believes the proposal was clear about the time at which the bank should record the location of the activity for other types of activities and, therefore, no other clarification is needed.

[174] *Auth. of the Fed. Fin. Supervisory Agencies Under the Cmty. Reinvestment Act,* 18 U.S. Op. Off. Legal Counsel 249 (1994).

purposes of the retail lending distribution test. However, banks must also report the quantified dollar value of all qualifying CD and retail loans, whether originated or purchased.

The final rule also includes reporting requirements for wholesale and limited purpose banks. The agency included reporting requirements for these banks to be consistent with the proposal and the current framework. Specifically, under the proposal, banks that meet the definition of wholesale or limited purpose bank in the final rule would have been evaluated under the general performance standards, unless they had assets of $500 million or less. Further, wholesale and limited purpose banks have reporting requirements under the current framework. The final rule requires that wholesale and limited purpose banks report information on their CD loans and CD investments, assessment areas, and performance context. The final rule also includes conforming edits related to the reporting requirements for wholesale and limited purpose banks.

In addition to the revisions described above, the final rule includes the following clarifying and conforming revisions: (1) Adds the words as applicable to the performance standards reporting requirements to clarify that not all banks that must report data will have information to report; (2) removes the data collection certification requirement given that the final rule does not permit banks to include affiliate activities; (3) changes the term quantified value to the term quantified dollar value to be consistent throughout the final rule; and (4) makes other technical and conforming revisions related to the changes discussed above.

Certain industry commenters suggested that banks operating under strategic plans should be exempt from data collection, recordkeeping, and reporting requirements that are not measured in the bank's strategic plan. One commenter noted that the data could be misleading to those who are unaware that a bank is operating under a strategic plan. Like the proposal, the final rule generally subjects banks operating under a strategic plan to the same data collection, recordkeeping, and reporting obligations as banks operating under the general performance standards, unless determined otherwise in writing by the OCC. The agency will consider appropriate exemptions from specific data collection, recordkeeping, and reporting requirements based on individual facts and circumstances.

Several industry commenters suggested that the agency allow CDFI reporting requirements to satisfy a bank's CRA data collection, recordkeeping, and reporting requirements. Similarly, one community group suggested that the agency recognize bank data reported under certain federal programs and that regulators develop protocols and procedures to share data while protecting proprietary information. Because the data collection, recordkeeping, and reporting requirements in the final rule are necessary to assess and validate CRA performance, the agency is not adopting these recommendations. The agency cannot ensure that these alternative reporting requirements will provide the information needed for CRA purposes. Other than the changes discussed above, the agency is finalizing the reporting section as proposed.

Public disclosures. Under the proposal, the agency would have made certain information that banks provide publicly available through individual and aggregate CRA Disclosure Statements, allowing stakeholders to observe trends and monitor and compare banks' CRA activities. In addition, the agency would have published each bank's ratings and a list of banks rated outstanding. Banks that received a bank assigned rating of outstanding would have received a certificate or seal of achievement to display on their websites and in their main office and branches. One industry commenter suggested that the agency also publish a list of banks rated satisfactory. Because each bank's rating will be published in its CRA PE and the list is intended to identify and encourage outstanding CRA performance, the final rule adopts the public disclosure provisions as proposed, except for a minor change replacing quantified value with quantified dollar value to use consistent terminology throughout the rule. Banks that are rated satisfactory are encouraged to inform their customers and communities of such a rating.

One industry commenter requested that the agency take steps to protect banks' financial information and their customers' information in the CRA Disclosure Statements. The agency recognizes the importance of protecting this information and will, consistent with applicable law, appropriately protect confidential supervisory information, confidential commercial information, and personally identifiable information from disclosure in the CRA Disclosure Statements issued under the final rule.[175]

One industry commenter recommended that performance standards data not be disclosed to the public because they would not represent performance over the entire evaluation period. The agency agrees and notes that the final rule requires reporting of presumptive ratings and retail distribution tests only at the end of an evaluation period.

A few community groups and industry commenters recommended that data on the geographic location of deposits be made publicly available if deposit-based assessment areas are adopted. As described above, the agency will make public aggregate data based on the information reported by banks. However, the final rule does not include public disclosure of deposit data consistent with the current CRA framework. The information about a bank's deposit-based assessment areas will be included in banks' CRA PEs. The agency does not think additional information is necessary, especially in light of the additional reporting burden that disclosure would require.

The proposal would also have retained many of the current regulation's provisions related to the public file,[176] planned evaluation schedules,[177] public notice by banks,[178] and the CRA notice.[179] Banks still would have needed to provide public notice to the communities they serve. Banks would also have needed to provide CRA-related information to community members upon request. CRA-related information would have included information about banks' branches, locations, and services, comments received from the public related to assessment area needs and opportunities, and responses to those comments. Other than technical and conforming edits, the agency is adopting these provisions as proposed.

Under the proposal, banks would not have had to provide data reported through HMDA in the public file. Some community groups opposed removing

[175] The OCC has treated and will continue to treat confidential commercial information submitted to the agency in accordance with 12 CFR 4.16, consistent with *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356, 2363 (2019), and the *Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA* (U.S. Department of Justice, Oct. 7, 2019), available at *https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential.*

[176] 12 CFR 25.43, 195.43.

[177] 12 CFR 25.45, 195.45.

[178] 12 CFR 25.44, 195.44.

[179] 12 CFR part 25 Appendix B.

HMDA data from banks' public files and suggested adding supplemental requirements if HMDA data is insufficient. They also opposed replacing HMDA data with Call Report data because the latter does not include borrower income information. Because the final rule does not rely on HMDA data, the agency is not requiring that the public file include HMDA data in the final rule. HMDA data will remain publicly available on the Consumer Financial Protection Bureau's website.[180]

Additionally, under the proposal, banks would no longer have been limited to providing public notice or the public file through physical means. Instead, banks would have had the option to provide public notice or the public file on their websites. The preamble to the proposal indicated that if a community member who requested CRA-related information did not have access to the internet, banks could offer to print out the information at that person's expense, instead of copying the information from the physical file.

One community group opposed the proposal of allowing banks to charge a fee for physical copies of the public file, which is permitted by the current rule.[181] The final rule, like the proposal, allows banks to make the public file available to the public through any means. The agency encourages banks to make the public file as accessible as possible and consider not charging fees for physical copies.

Evaluation periods and issuance of CRA PEs. The proposal did not specify the length of CRA evaluation periods. However, the proposal stated that banks that received an outstanding CRA assigned rating would have been subject to a five-year CRA evaluation period, unless the data reported indicates that an earlier evaluation is warranted. Some commenters suggested that the final rule specify the length of evaluation periods. The agency believes that the current regulatory framework, in which the regulation does not specify the length of an evaluation period, continues to be appropriate and the agency will continue its current practice of publishing evaluation schedules to provide sufficient clarity and flexibility. Although the agency is finalizing the rule without specifying the length of an evaluation period, the agency expects that, in general, evaluation periods will be between three years and five years in length.

Some community groups expressed concern about the five-year evaluation cycle for banks rated outstanding, including that it would not sufficiently incentivize banks to consistently help to meet the credit needs of their communities and that data considered in merger transactions could be stale. In contrast, an industry commenter recommended that the evaluation period for a bank rated satisfactory be four years. The agency notes that the concern about inconsistent performance is mitigated by the fact that the final rule incentivizes banks to consistently meet the needs of their communities by using the average on-balance sheet value of many qualifying loans and investments. The agency also emphasizes that, while it is maintaining the expectation of a general five-year evaluation cycle for banks rated outstanding, the final rule requires banks to report data annually, including banks with outstanding ratings that would be evaluated every five years. In addition, the agency will continue to make available all banks' annual CRA Disclosure Statements, which include information about the aggregate quantified dollar value of the bank's qualifying activities by category and the number of retail loans in each county, by type. The annually-reported information will allow the agency and interested stakeholders to track and monitor bank performance. The agency does not plan to implement the commenters' recommendation that banks with satisfactory performance have four-year evaluation periods because it expects all banks should strive to achieve satisfactory performance and the five-year evaluation cycle was meant to recognize exceptional performance.

One industry commenter recommended that the final rule define the term evaluation period. The agency believes that the preamble to the proposal and this final rule make clear that the term refers to the multiyear period over which a bank's CRA performance is evaluated and assigned a rating. The final rule does not include it as a defined term.

Two community groups and two industry commenters recommended that the agency issue CRA PEs within a pre-determined amount of time from the end of the CRA evaluation. The agency intends to issue CRA PEs in as timely a manner as possible. Because a variety of factors can cause some CRA PEs to require more time to complete than expected, including the consideration of discriminatory and other illegal credit practices, the agency is not adopting a time limit in the final rule. The agency notes, however, with improved data and more objective evaluations, the agency expects that evaluations will be published quickly and more consistently after the close of an evaluation.

Conforming, clarifying, and technical changes. Other than the changes explained above and conforming, clarifying, and technical revisions, the OCC is adopting the data collection, recordkeeping, and reporting requirements as proposed.

E. Other Issues

Effective date, compliance dates, and transition. The agencies proposed an effective date of the first day of the first calendar quarter that would have begun at least 60 days after the issuance of the final rule. The proposal also included a transition period, implemented through varying compliance dates following the effective date, to allow banks to revise their systems for collecting, maintaining, and reporting data and to establish processes for calculating their qualifying activities values and CRA evaluation measures and determining their presumptive ratings. Specifically, the proposal provided a bank other than a small bank with: (1) One year after the rule's effective date to comply with the rule's assessment area, data collection, and recordkeeping requirements; and (2) two years after the rule's effective date to comply with the rule's reporting requirements. The proposal provided small banks with one year after the rule's effective date to comply with the rule's assessment area and applicable data collection and recordkeeping requirements. No bank had to comply with the remaining requirements of the rule—and thus be evaluated under the new framework—until it completed its evaluation period that concluded immediately after the reporting requirements compliance date in the proposal, including any extensions approved by its relevant agencies.

The proposal provided small banks that opted into the general performance standards, as of the final rule's effective date, and those banks that no longer meet the definition of a small bank with: (1) Two years to comply with the rule's assessment area, data collection, and recordkeeping requirements, after the rule's effective date or after the bank no longer met the definition of a small bank; and (2) three years to comply with the rule's reporting requirements, after the rule's effective date or after the bank no longer met the definition of a small bank. However, small banks that chose to opt into the general performance standards after the effective date would have received: (1) One year after the

[180] HMDA data can be accessed here: *https://www.consumerfinance.gov/data-research/hmda/historic-data/.*

[181] 12 CFR 25.43(d), 195.43(d).

bank opted in to comply with the rule's assessment area, data collection, and recordkeeping requirements; and (2) two years after the bank opts in to comply with the rule's reporting requirements.

Several industry commenters suggested that the implementation period for the new regulatory framework would have been too short, specifically with respect to the data collection, recordkeeping, and reporting provisions. They offered a variety of reasons to support this view, including the COVID–19 pandemic. One industry commenter also suggested providing additional time to comply for banks that are required to delineate new deposit-based assessment areas. Another industry commenter recommended that the agencies implement a ratings floor to protect against downgrades during the transition to the new framework. Many other commenters asked for additional clarification on how the phased in compliance dates would work.

The agency has carefully considered these comments and understands that the cost and time frame associated with complying with the final rule will vary from institution to institution. However, considering that the final rule increased the small bank size threshold and reintroduced the performance standards applicable to intermediate banks and wholesale and limited purpose banks, the final rule includes more streamlined compliance dates based on the applicable performance standards. The final rule also includes a provision addressing the transition from the current framework to the framework in the final rule.

Specifically, the final rule's effective date of October 1, 2020 is the first day of the first calendar quarter that begins at least 60 days after the issuance of the final rule. The streamlined compliance dates in the final rule allow banks [182] to determine individually when to implement the various systems changes required to comply with this rule by the compliance dates in the final rule. Accordingly:

- Banks subject to the general performance standards must comply with the following sections of the final rule by January 1, 2023: (1) Qualifying activities quantification; (2) qualifying activities value; (3) assessment area; (4) performance standards, in general; (5) CRA evaluation measure; (6) retail lending distribution tests; (7) general performance standards and ratings; (8) data collection; (9) recordkeeping; and (10) reporting.
- Banks subject to the wholesale or limited purpose bank performance standards must comply with the following sections by January 1, 2023: (1) Assessment area; (2) wholesale or limited purpose bank performance standards; (3) data collection for wholesale and limited purpose banks evaluated under the wholesale or limited purpose bank performance standards; (4) recordkeeping; and (5) reporting for banks evaluated under the general performance standards, the wholesale or limited purpose bank performance standards, or a strategic plan.
- Banks subject to the small and intermediate bank performance standards must comply with the following sections by January 1, 2024: (1) Assessment area; (2) small and intermediate bank performance standards; (3) retail domestic deposit data collection for small and intermediate banks evaluated under the small and intermediate bank performance standards; and (4) recordkeeping.

The final rule also clarifies that during the period between October 1, 2020 and the compliance dates in the final rule applicable to the different types of banks, the provisions of the current regulation will remain in effect as an alternative compliance option [183] to provide flexibility for banks that have a CRA evaluation during this period. The OCC retains the authority to ensure an orderly transition between the two frameworks and will work with banks that are impacted by the transition during this time. Accordingly, the OCC may permit banks to rely on: (1) The applicable performance standards and tests, procedures, processes, definitions, or another element of the current framework; or (2) the new framework in the final rule. The final rule also provides that the alternative compliance provisions containing the current framework will expire on January 1, 2024, at which point all banks must be in compliance with all provisions of the final rule.

With respect to the possible effect of COVID–19 on a bank's ability to meet the compliance dates, the OCC notes that the economic challenges experienced in LMI communities as a result of the COVID–19 pandemic make it critical that implementation of this rule not be delayed so that the benefits of the new rule can reach these communities as soon as possible.

Industry commenters specifically discussed the compliance dates in the context of the burden of the proposal's mandatory inclusion of consumer lending, including the applicable data collection, recordkeeping, and reporting requirements. According to these commenters, consumer loan data is typically stored in multiple data systems and the costs required for compliance would discourage banks from offering these products. One industry commenter suggested removing all loans for which reporting processes are not currently in place from the qualifying activities component of the CRA evaluation measure numerator to hasten compliance.

The OCC recognizes the specific data collection challenges presented by consumer loans, particularly with respect to credit cards. Since the final rule includes a more limited definition of consumer loans that does not include credit cards, the final rule does not provide extended compliance dates for consumer lending.

Commenters also requested that the agencies provide examples of how the transition periods will apply to banks evaluated under the different performance tests and standards. The chart below provides examples:

COMPLIANCE DATES

Bank type	Qualifying activities quantification, qualifying activities value, general performance standards, and presumptive ratings	Assessment area, data collection, and record-keeping requirements, as applicable	Reporting requirements	All other requirements
Banks other than small, intermediate, wholesale, and limited purpose banks.	January 1, 2023	January 1, 2023	January 1, 2023	October 1, 2020.
Wholesale and limited purpose banks	Not Applicable	January 1, 2023	January 1, 2023	October 1, 2020.

[182] The streamlined compliance dates also apply to banks that elect to opt in to the general performance standards and banks that cease to meet the definition of a small, intermediate, wholesale, or limited purpose bank.

[183] The final rule includes a new Appendix C for the alternative compliance provisions that sets forth parts 25 and 195 in effect on the date prior to October 1, 2020.

COMPLIANCE DATES—Continued

Bank type	Qualifying activities quantification, qualifying activities value, general performance standards, and presumptive ratings	Assessment area, data collection, and record-keeping requirements, as applicable	Reporting requirements	All other requirements
Small and intermediate banks	Not Applicable	January 1, 2024	Not Applicable	October 1, 2020.

Special purpose banks. One commenter requested confirmation that banks currently designated as special purpose banks would be exempt under the final rule. Though the proposal did not include the term special purpose banks, its scope did not include certain exempt banks, which covers the same banks exempted as special purpose banks under of the current rule.[184] The final rule maintains this exemption.

Effect of CRA performance on applications. The proposal included a section on the effect of CRA performance on applications that was based on the current regulatory framework. The agency received several comments on the use and effect of CRA ratings.

A few commenters asked about the effect of presumptive ratings on a covered application. The agency intends to use assigned, not presumptive, ratings when evaluating an application for which CRA performance is considered and notes that presumptive ratings may be subject to upward or downward adjustments after considering performance context factors and evidence of discriminatory or other illegal credit practices. The agency will, however, evaluate all the facts and circumstances of each application and use all available information to inform its judgement and decision on the statutory factors.

Commenters also offered suggestions on the impact of CRA ratings including not allowing negative community group comments to delay mergers or acquisitions of a bank rated satisfactory or outstanding on its most recent CRA evaluation. The agency intends to follow its applicable guidance on the impact of CRA ratings on licensing applications.[185] Accordingly, the agency is adopting these provisions as proposed.

Minority depository institutions, women's depository institutions, or low-income credit unions, CDFIs, and other mission-focused banks. A few commenters recommended exemptions or tailoring of requirements for minority depository institutions, women's depository institutions, or low-income credit unions, CDFIs, and other mission-focused banks. The OCC has a statutory obligation to assess bank performance. Although the mission of these banks increases the likelihood that banks are helping to meet the credit needs of their communities, the agency must still evaluate and rate their performance.

One industry commenter recommended defining minority depository institutions and women's depository institutions to include banks where a majority of the directors and a majority, or a significant percentage, of senior officers are minorities or women. Because these terms are defined in the CRA statute, the OCC is not altering the definitions in the final rule.

Military banks. One industry commenter supported the proposal's inclusion of a definition of military bank but recommended that it be modified to include on-base branches of banks or to allow assessment areas to consist only of the base on which a branch is located. The commenter also recommended a separate performance standards section for military banks. The OCC believes that the general performance standards are sufficiently flexible so that separate performance standards for military banks are not necessary. They will be evaluated like other banks with similar levels of retail domestic deposits, but, as indicated in the proposal and the final rule, their assessment areas will consist of the entire United States. They will only be evaluated under the bank performance standards, not the assessment area performance standards. Thus, the agency adopts the provisions related to military banks as proposed.

Financings and renewals. One commenter indicated that it was unclear whether the term financing includes renewals as customarily defined in commercial lending as opposed to the current CRA regulation's definition. The commenter recommended using the Call Report definition of financing and recommended an expanded definition of renewals to align with common banking usage. The final rule defines financing as permissible equity or debt facilities, such as loans, lines of credit, bonds, private funds, securities, or other permissible investments. As described below, the numerator of the CRA evaluation measure considers the on-balance sheet value of qualifying activities. If a financing is on-balance sheet as of the close of business of the last day of the month, it will count toward the bank's CRA evaluation measure whether it is a new loan or a renewal.

Severability. The agency intends for each section or provision of this final rule to be severable from the remainder of the rule. In addition, although the agency has addressed four categories of CRA-related issues in this rulemaking: (1) Qualifying activities; (2) assessment areas; (3) measurement of CRA performance; and (4) data collection, recordkeeping, and reporting, it could have finalized any one or any combination of the four categories on its own because each section and provision within each section can stand and operate alone. The final rule includes language providing that if any section or any provision of any section of the final rule is held to be invalid or stayed for any reason, it is the OCC's intention that the remaining sections and provisions of the final rule shall continue in effect.

Conforming, clarifying, and technical changes. Other than the changes discussed in this section and the sections above and conforming, clarifying, and technical changes, the (1) authority, purposes, and scope provisions; (2) the effect of CRA performance on applications; and (3) the definitions in are adopted as proposed.

F. Miscellaneous

Prohibition against the use of interstate branches primarily for deposit production. The agency is adopting the provisions on the prohibition against use of interstate branches primarily for deposit production (Subpart F) as proposed with conforming changes.

Integration of Parts 25 and 195. As proposed, this final rule also consolidates the OCC's national bank and federal savings association CRA rules by applying Part 25 to savings associations and removing the current OCC's CRA rule for savings associations, 12 CFR 195. The OCC received no comments on this consolidation.

[184] *See* 12 CFR 25.11(c)(3); 195.11(c)(2).

[185] *See e.g.,* OCC Bulletin 2017–51, *Community Reinvestment Act: Impact of CRA Ratings on Licensing Applications,* (Nov. 8, 2017), available at *https://el.occ/news-issuances/bulletins/2017/bulletin-2017-51.html.*

Mapping tools. One industry commenter and one community group suggested that the agencies develop mapping tools, such as a CRA map of the United States to identify potential CRA gaps or a map to identify gaps in assessment areas. The agency will consider developing these tools over time but is not adopting them as part of the final rule.

Release of RFI data. On January 10, 2020, the agency published an RFI seeking four types of bank-specific data or information to assist in drafting a final rule.[186] Commenters argued that the OCC was required to release the data and information the agency received in response to the RFI to provide the public with a meaningful opportunity to comment on the NPR. However, the RFI included an express statement that the agency would treat any confidential commercial information submitted in response to the RFI in accordance with relevant rules, guidance, and case law.[187]

The OCC received a total of 67 comments on the RFI. Of these, 61 comments were not responsive to the information request and were posted to the RFI public docket. Because the remaining six comments, which were responsive, contained confidential commercial information, the OCC is not making them public. Because of the limited number of responses to the RFI, the agency did not rely on any RFI data in formulating the final rule. As noted above, the agency will be issuing another rulemaking to set the benchmarks for the objective evaluation measures.

CRA sunshine requirements. In addition to the proposed data collection, recordkeeping, and reporting provisions contained in this proposal, the agencies noted that Congress required the agencies to issue rules implementing the CRA Sunshine Requirements as part of the Gramm-Leach-Bliley Act of 1999.[188] The agency's Disclosure and Reporting of CRA-Related Agreements regulations define and address written agreements between financial institutions and nongovernmental entities or persons that are made in fulfillment of the CRA, and require that those agreements be made available to the public and the appropriate federal banking agency.[189] Further, the regulations require parties to a covered agreement to file reports with the appropriate federal banking agency for the duration of the agreement. The agency emphasizes again the continued importance of complying with the Disclosure and Reporting of CRA-Related Agreement regulations to ensure public awareness of the terms and conditions of covered agreements.

VI. Regulatory Analysis

Paperwork Reduction Act of 1995

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995.[190] In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC reviewed the final rule and determined that it revises certain information collection requirements previously cleared by OMB under OMB Control No. 1557–0160. The OCC has submitted the revised information collection to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). OMB filed a comment in response to the OCC's submission requesting that the OCC resubmit it at the final rule stage.

Current Actions

Under the final rule:

- Interested parties may request that the OCC confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form. 12 CFR 25.05(c)(1).
- Banks must request that the OCC confirm that an area is a CRA credit desert before receiving the CRA credit desert multiplier in an evaluation period. 12 CFR 25.06(b), (c)(1).
- A bank must delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. 12 CFR 25.09.
- To receive a designation as a wholesale or limited purpose bank, a bank must file a request, in writing, with the OCC, at least three months prior to the proposed effective date of the designation. 12 CFR 25.15(b).
- Banks that are not small banks must submit certain information for each assessment area and for the bank level on the Performance Context Form. 12 CFR 25.16(c).
- A bank must submit a strategic plan if the bank: (1) Would otherwise be evaluated under § 25.13 and does not maintain retail domestic deposits on-balance sheet or (2) a bank not covered under paragraph (b)(1) of this section may submit a strategic plan for approval. 12 CFR 25.18.
- A bank evaluated under the general performance standards in § 25.13 and a bank evaluated under a strategic plan under § 25.18, unless otherwise determined in writing by the OCC, must collect and maintain the information required by 12 CFR 25.21 until completion of the relevant CRA evaluation. 12 CFR 25.21.
- A small or intermediate bank evaluated under the small and intermediate bank performance standards under § 25.14 must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor. 12 CFR 25.22.
- A wholesale or limited purpose bank evaluated under the wholesale and limited purpose performance standards in § 25.15 must collect and maintain qualifying community development loan, community development investment, and community development service and retail domestic deposit data until the completion of the relevant CRA evaluation. 12 CFR 25.23.
- Banks must keep the data collected under § 25.21 through § 25.23 in machine readable form (as prescribed by the OCC) until the completion of their next CRA evaluation. 12 CFR 25.25.
- Banks evaluated under the general performance standards in § 25.13 and banks evaluated under a strategic plan under § 25.18, unless otherwise determined in writing by the OCC, must report the information required by 12 CFR 25.26. 12 CFR 25.26.
- Banks must maintain a public file that includes all written comments and responses; a copy of the public section of the bank's most recent CRA performance evaluation; a list of the bank's branches, their street addresses, and census tracts; a list of the branches opened or closed, their street addresses, and geographies; a list of services offered; a map of each assessment area; and any other information the bank chooses. Banks with strategic plans must include a copy of the plan. Banks with less than satisfactory ratings must

[186] *See* 85 FR 1285 (Jan. 10, 2020). Specifically, the RFI sought data or information on: (1) Retail domestic deposit activities; (2) qualifying activities; (3) retail loans originated and sold within 90 days; and (4) other retail loan.

[187] *See, e.g.,* 12 CFR 4.16; *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356, 2363 (2019); and *Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential Under Exemption 4 of the FOIA* (U.S. Department of Justice, Oct. 7, 2019), available at *https://www.justice.gov/oip/step-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential.*

[188] *See* 12 U.S.C. 1831y; 12 CFR parts 35, 207, 346.

[189] *See* 12 CFR part 35.

[190] 44 U.S.C. 3501–3521.

include a description of their current efforts to improve their performance in helping to meet the credit needs of their entire community. The banks must update the description quarterly. Banks must make all of this information available to the public. This information must be current as of April 1 of each year. 12 CFR 25.28.

OCC Title of Information Collection: Community Reinvestment Act.

Frequency: On occasion.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 285.

Total estimated annual burden: 603,260 hours.

Comments continue to be invited on:

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

b. The accuracy or the 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 the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Regulatory Flexibility Act

Section 3(a) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq,* requires an agency to provide an initial regulatory flexibility analysis (IRFA) with a proposed rule and a final regulatory flexibility analysis (FRFA) with a final rule if the agency cannot certify that the proposed or final rule will not have a significant economic impact on a substantial number of small entities.[191] In accordance with the RFA, the OCC published an IRFA with the CRA proposed rule. The OCC is now publishing a FRFA for the final rule.[192]

A. Statement of the Need for and Objectives of the Final Rule

As discussed in the **SUPPLEMENTARY INFORMATION** section above, the OCC is issuing this final rule to strengthen and modernize implementation of the CRA. During the past 25 years, technology and the expansion of interstate banking have transformed the financial services industry, how banks deliver their services, and how customers choose to bank. These changes affect banks of all sizes and are most evident in banks that have a limited physical presence or rely heavily on technology to deliver their products and services. As banking has evolved, banks' communities have evolved beyond those that are solely identifiable by the delineated areas surrounding banks' physical locations. At the same time, communities' needs for community development (CD) lending and investment have evolved, and the OCC has gained a greater understanding of those needs. The current CRA regulatory framework has not kept pace with the transformation of banking and has had the unintended consequence of incentivizing banks to limit some of their CD loans and investments.

Furthermore, the current CRA rules have created uncertainty for banks about which activities qualify for CRA credit and how much those activities contribute to a bank's CRA rating. The current framework lacks consistent and objective evaluations and timely and transparent reporting for certain activities, which inhibits stakeholders' ability to understand how and to what extent banks are meeting community credit needs.

The goals of this final rule are to make the CRA framework more objective, transparent, consistent in application, and reflective of changes in banking. Accomplishing these goals would make the CRA framework a better tool to encourage banks to engage in more activities to serve the needs of their communities, particularly in low- and moderate-income communities and other communities that have been underserved under previous versions of the CRA regulatory framework.

Specifically, this final rule: (1) Clarifies and expands the bank lending, investment, and services (collectively, qualifying activities or CRA activities) of national banks, Federal branches of a foreign bank, Federal savings associations, and State savings associations that qualify for positive CRA consideration; (2) updates how banks delineate the assessment areas in which they are evaluated; (3) provides additional methods for evaluating bank CRA performance in a consistent and objective manner; and (4) requires reporting that is timely and transparent. Together, these changes will provide greater regulatory consistency and certainty in evaluating banks' CRA performance, which are essential for banks to achieve the intent and purpose of the statute: To help meet the credit needs of their communities, consistent with their safe and sound operations.

B. Significant Issues Raised by Public Comments on IRFA

The OCC received comments from the Office of Advocacy of the U.S. Small Business Administration (Advocacy) specifically addressing the OCC's IRFA included in the proposed rule pursuant.

Advocacy asserted that there may be less burdensome alternatives that the OCC should consider under its obligation to comply with the RFA. Advocacy further stated that requiring a small bank to incur the same regulatory burden as a much larger bank is inconsistent with the RFA. The OCC notes that the final rule imposes different requirements on small and intermediate banks than on larger banks. Specifically, the final rule provides that small banks, defined as having assets of $600 million or less, and intermediate banks, defined as having more assets than a small bank but less than $2.5 billion in assets, may operate under the current CRA small bank and intermediate small bank performance standards, instead of the final rule's more complex general performance standards. These standards are more tailored to the size of small and intermediate banks and their lending practices. This approach differs from the proposed rule, which only would have exempted banks with $500 million or less in assets from the general performance standards. In addition, small and intermediate banks are generally exempt from the enhanced data collection, recordkeeping, and reporting requirements contained in the final rule, with certain exceptions. The small and intermediate bank exemptions from the general performance standards and the data collection, recordkeeping, and reporting requirements will reduce regulatory burden for small and intermediate banks. Therefore, small and intermediate banks as defined in the final rule will not be subject to the same regulatory burden under the final rule as larger banks.

Advocacy also noted that the OCC may have misstated the economic impact on OCC-regulated small banks. However, after reviewing the IRFA we have determined that the numbers presented in the IRFA accurately reflect the OCC's estimates. The IRFA focused on where the impact was economically significant. Specifically, the OCC stated that 782 small entities would be

[191] Small Business Administration (SBA) regulations currently define small entities to include banks and savings associations with total assets of $600 million or less, and trust banks with total assets of $41.5 million or less. 13 CFR 121.201.

[192] Further OCC analysis of the final rule under the RFA is available at: *http://www.regulations.gov,* Docket ID OCC–2018–0008.

impacted, but only 72 small entities would have a significant economic impact totaling $36 million, or $500,000 per bank or small entity. We believe the Advocacy mistakenly concluded that the $36 million cost estimate was for all 782 small entities.

C. OCC Response to Chief Counsel for Advocacy of the Small Business Administration

The OCC received comments on the final rule from Advocacy in addition to those on the OCC's IRFA as described above. Advocacy generally supported efforts to update and clarify the OCC's CRA regulations but noted that the proposed rule would be unduly burdensome for small banks. Advocacy's specific comments and recommendations on the proposed rule and the OCC's response to these comments follows below.

Advocacy stated that the proposed definition of ''small bank'' ($500 million in assets) is problematic and that unless authorized by statute, a Federal agency must use the U.S. Small Business Administration's (SBA) size standard unless a different standard is approved by the SBA Administrator and published for notice and comment. The OCC agrees that the definition should be changed and adopts $600 million threshold for small banks in the final rule. This threshold is now consistent with the threshold for small banks included in the SBA's size standards defining small business concerns.[193]

Under the proposal, a small bank could elect to opt in to the general performance standards six months prior to the start of its next evaluation period. However, it could elect no more than once to opt out of the general performance standards. Advocacy suggested that there should not be a limit on the number of times that a small bank can opt in and out of the general standard. The OCC believes that providing a small bank with the opportunity to opt in or out of the general performance standards one time provides a small bank with adequate flexibility to select the CRA framework that best meets its needs.

Advocacy noted that the proposed rule provides that a bank will only receive credit for 25 percent of the origination value for loans sold within 90 days of origination. If a loan is held for greater than 90 days, the bank receives 100 percent credit. If the loan is held for less than 90 days, the bank only receives 25 percent credit. Advocacy noted that this policy may be unfair to small banks because small banks should not be punished because their business plan requires them to sell loans in less than 90 days. Advocacy stated that allowing small banks to receive 100 percent credit regardless of the length of time they hold a loan may incentivize them to provide additional service to their communities. The OCC agrees that retail loan originations are an important type of credit for certain populations and communities of need. Further, the OCC also did not intend to favor one business model over another. In response to this and similar comments, the final rule provides that retail loan originations sold at any time within 365 days of origination will receive credit for 100 percent of the origination value.

Advocacy recommended that the OCC exempt small banks from the requirement to collect and maintain information on depositors necessary for the designation of deposit-based assessment areas. The OCC disagrees with this recommendation. This collection requirement serves an important role in the CRA framework in that it will enable the OCC to identify the bank's assessment areas and therefore to better assess a bank's CRA performance. The final rule does, however, clarify that retail domestic deposits need to be geocoded to the county level, not the census tract level.

Advocacy also stated that the proposed compliance dates are confusing and that small banks should be allowed a consistent three years to comply. To minimize this confusion, the final rule adopts a more streamlined transition period for most requirements and generally increases the transition period for all banks. Specifically, small banks that do not opt-in to the general performance standards must comply with the rule's assessment areas, data collection, and recordkeeping requirements, as applicable, by January 1, 2024, which generally increases the transition time for these requirements by more than two years as compared to the proposal. Further, the final rule clarifies that the new qualifying activities criteria section, qualifying activities confirmation process, and CRA desert confirmation process will be effective as of the effective date of the final rule. As a result, small and intermediate banks will be able to immediately take advantage of the clarity provided by these elements.

Advocacy also provided several comments addressing the OCC's initial regulatory flexibility analysis. These comments are discussed in section B., above.

D. Small Entities Affected by the Final Rule

Small Business Administration regulations define ''small entities'' for banking purposes, as entities with total assets of $600 million or less.[194] The OCC currently supervises approximately 745 small entities. The final rule would affect approximately 708 of those entities.[195]

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements of Final Rule

As described above, the final rule sets forth new qualifying activities criteria; assessment area delineation requirements; general performance standards; and data collection, recordkeeping, and reporting requirements. The final rule generally applies to national banks, Federal branches of a foreign bank, Federal savings associations, and State savings associations. However, the final rule exempts small banks, defined as having assets of $600 million or less, and intermediate banks, defined as having more assets than a small bank but less than $2.5 billion in assets, from the new general performance standards and the related data collection, recordkeeping, and reporting requirements, with the exception of the retail domestic deposit data requirements. Instead, small banks may operate under the current CRA small bank and intermediate small bank performance standards. These banks also may opt in to the new performance standards, in which case they would be subject the data collection, recordkeeping, and reporting requirements of the final rule or may choose to be evaluated under an approved strategic plan. A summary of the new requirements contained in the final rule is set forth below.

Assessment area delineation requirements. Generally, a bank must delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The final rule requires that a bank delineate

[193] 13 CFR 121.201.

[194] *See* 13 CFR 121.201 (Sector 52, Subsector 522).

[195] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. The OCC uses December 31, 2019, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

''facility-based'' assessment areas encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility that is not an ATM as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. The geographic levels for delineation of facility-based assessment areas could be any of the following: One MSA; the whole nonmetropolitan area of a state; one or more whole, contiguous MDs in a single MSA; or one or more whole, contiguous counties or county-equivalents in one MSA or nonmetropolitan area. A facility-based assessment area may not extend beyond an MSA or state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends beyond a state boundary, the bank must delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends beyond an MSA boundary, the bank must delineate separate assessment areas for the areas inside and outside the MSA. The final rule also provides that banks may, but are not required to, delineate facilities-based assessment areas around deposit-taking ATMs.

In addition to requiring the delineation of facility-based assessment areas, the final rule also mandates that if a bank receives 50 percent or more of its total retail domestic deposits from areas outside of its facility-based assessment areas, the bank must delineate separate, non-overlapping ''deposit-based'' assessment areas. These deposit-based assessment areas can be delineated at any geographical level where the bank receives five percent or more of its retail domestic deposits, including a state; an MSA; the whole nonmetropolitan area of a state; one or more whole, contiguous MDs in a single MSA; the remaining geographic area of a state, MSA, nonmetropolitan area, or MD other than where it has a facility-based assessment area; or one or more whole, contiguous counties or county-equivalents in one MSA or nonmetropolitan area. With limited exceptions, an assessment area delineation can only change once per year and must not change within the annual period used to determine an assessment area CRA evaluation measure.

Small banks, intermediate banks, wholesale banks, and limited purpose banks would follow the same proposed rules on assessment area delineation as other banks, but military banks would have the entire United States and its territories as their assessment area.

For banks choosing the option of a strategic plan, the plan must include a delineation of the bank's assessment areas(s) that meets the requirements of § 25.09(a)–(d). In addition, the plan may include assessment area delineations that reflect its target geographic market as defined by the bank in its strategic plan. For a de novo bank, the assessment area delineations should include the projected location of its facilities, retail domestic deposit base, and lending activities.

Data collection, recordkeeping, and reporting requirements. For a bank evaluated under the general performance standards or a strategic plan, the final rule requires that the bank must collect and maintain, along with supporting documentation, certain performance standards data, including the bank's retail lending distribution test ratios, the bank's CRA evaluation measure and each assessment-area CRA evaluation measure, the bank's CD minimum and each assessment-area level CD minimum, and the bank's presumptive ratings. Banks are required to report the distribution test ratios and presumptive ratings at the end of the evaluation period, whereas, banks must report the CRA evaluation measure on an annual basis. For all qualifying retail and CD loans, CD investments, and CD services, banks will be required to collect and maintain data including, but not limited to: The location of the loan, investment, or service; an indicator of whether a multiplier applies to the loan, investment or service; and the qualifying activities criteria that the loan, investment, or service satisfies. On an annual basis, these banks must report the quantified dollar value of qualifying retail loans, CD loans, CD investments, and CD services. The final rule also requires these banks to collect and maintain data for originations of non-qualifying home mortgage loans, small loans to businesses, small loans to farms, and consumer loans made by the bank. Banks must annually report, among other things, the total number of retail loans (home mortgage loans, small loans to a business, small loans to a farm, or consumer loan) that are originated during the annual period; the number of these loans that are originated in low- and moderate-income census tracts at the county or county equivalent level; the number of home mortgage and consumer loans originated to low- and moderate-income borrowers; and the number of small loans to businesses and small loans to farms originated to CRA-eligible businesses and farms, respectively.

For grandfathered qualifying activities, banks evaluated under the general performance standards or a strategic plan are required to maintain and collect data on, among other things, a description of the activity and a statement certifying that the activity would have received positive CRA consideration on the day prior to the effective date of the final rule and is on a bank's balance sheet on the effective date of the final rule. These banks are also required to collect and maintain a list of their assessment areas and within each assessment area, each county or county-equivalent, MD, nonmetropolitan area, MSA, or state. This assessment area information must be reported annually. These banks must also collect and maintain information on deposit-taking facilities.

For wholesale and limited purpose banks, the final rule requires that these banks collect and maintain information about qualifying CD loans, investments, and services, including, but not limited to, the qualifying activity criteria that the loan, investment, or service satisfies. These banks must also collect and maintain data regarding assessment areas and deposit-taking facilities. Wholesale and limited purpose banks must also provide the certification described above for grandfathered qualifying activities. They also must report on an annual basis the value of CD loans and investments as well as their assessment area data, among other things.

Under the final rule, all banks must collect and maintain the value of each retail domestic deposit account and the physical address of each depositor. Moreover, banks evaluated under the general performance standards or a strategic plan must annually report their average quarterly retail domestic deposits as of the close of business on the last day of each quarter. These banks as well as wholesale and limited purpose banks must also report performance context information before the beginning of their CRA performance evaluation.

All banks must keep the data they are required to collect in a machine-readable form as prescribed by the OCC. As in the current rule, banks also must maintain a public file that includes, among other things, written comments related to assessment area needs, a copy of the public section of the bank's most recent performance evaluation, and for banks approved to be assessed under a strategic plan, a copy of that plan. Finally, as in the current rule, banks must make available to the public a notice explaining to customers that they are entitled to certain information.

F. Description of Steps Taken To Minimize the Significant Economic Impact on Small Entities and Alternatives Considered

As discussed below and in the **SUPPPLEMENTAL INFORMATION** section, the OCC has sought to incorporate flexibility into the final rule and lessen burden and complexity for smaller banking entities wherever possible, consistent with the goals of the CRA, safety and soundness, and other applicable law.

Community Bank Exemption for Certain Requirements. The OCC recognizes that, in general, community banks operate under different business plans and with more limited resources and staffing levels than larger banks. Therefore, the final rule allows small and intermediate size banks to operate under the current CRA small bank and intermediate small bank performance standards, which are more tailored to their size and lending practices, instead of the final rule's more complex general performance standards. However, community banks can take advantage of the qualifying activities criteria and the qualifying activities list in the final rule, which provide greater regulatory certainty, objectivity, transparency, and consistency for what qualifies for CRA. Small banks also follow the final rule's new assessment area delineation requirements, which update the existing requirements to reflect the modern banking environment. The OCC notes that these new assessment area delineation requirements may not increase the compliance burden as banks may be able to demonstrate that more than 50 percent of their retail domestic deposits fall within their facility-based assessment area(s). The OCC believes that this approach in the final rule will provide additional flexibility for smaller banks without sacrificing the OCC's goal of achieving transformational CRA reform that provides clarity and encourages banks to conduct more CRA qualifying activities.

The OCC notes that some commenters opposed the small bank exemption, arguing that the small bank performance standards do not adequately evaluate CD activity. These commenters instead asked the OCC to evaluate all banks, including small banks, under the general performance standards. The OCC disagrees with these commenters and has rejected this alternative approach because of the cost and regulatory burden imposing the general performance standards would have on community banks, as discussed above. Banks subject to the small bank and intermediate bank performance standards will still be able to engage in CD activities and these activities will be examined by the OCC in CRA examinations. The final rule's approach provides additional flexibility to, and minimizes regulatory burden on, smaller institutions while at the same time encourages small banks to conduct more CRA qualifying activities.

The final rule also allows small and intermediate banks to opt into the general performance standards or choose to be evaluated under an approved strategic plan. These options allow small and intermediate banks to choose the performance standards that best fit their needs and objectives. Some commenters supported limiting the number of times a small bank that opts in to the general performance standards can opt out again or even eliminating the one-time opt out option. One commenter suggested that the OCC should not limit the number of times that a small bank can opt in and out of the general standard. After considering these alternatives, OCC is retaining the one-time opt out option as proposed in order to preserve some flexibility for community banks. Some commenters stated that agencies should not require that small banks opt in or opt out of the general performance standard six months prior to the start of its next evaluation period as provided in the proposal. The agency agrees that the requirement to opt-in or opt-out at least six months before the start of its next exam cycle is not needed and has removed it from the final rule.

Intermediate banks. The proposed rule did not carryover the concept of intermediate small banks. The current rule's threshold for small banks is $1.305 billion. Banks with assets of between $326 million and $1.305 billion are defined as intermediate small banks. Under the current rule, small banks with assets of under $326 million are evaluated under a streamlined assessment method focusing on retail lending. Intermediate small banks are evaluated under the same lending performance criteria as the small institutions, but also are evaluated on their community development activities. The proposed rule defined ''small bank'' as a bank with $500 million or less in assets and did not include intermediate small banks. The OCC has reevaluated the proposed rule's regulatory framework and agrees with commenters that banks that are considered intermediate small banks under the current rule should not be required to comply with the final rule's general performance standards and that it would be especially burdensome for intermediate small banks to transition to a new framework. The final rule therefore reintroduces the concept of intermediate small bank (renamed ''intermediate bank''), defined as a bank with assets of greater than a small bank but $2.5 billion or under, and applies the current intermediate small bank performance standards to these intermediate banks. As a result, the OCC finds that 188 additional banks will be evaluated under the less complicated performance standards of the current rule.[196] Further, this approach will eliminate the transition cost and burden that would have been imposed on these intermediate banks that would have been subject to the general performance standards under the proposed rule.

Definition of ''small bank'' and ''intermediate bank.'' As indicated above, the current rule's definition of ''small bank'' is a bank with assets of less than $1.305 billion and of ''intermediate small bank'' is a bank with assets of between $326 million and $1.305 billion, and both small banks and intermediate small banks comply with performance standards more tailored to their size. The proposed rule defined ''small bank'' as a bank with $500 million or less in assets and did not include intermediate small banks. Some commenters recommended raising the proposal's small bank threshold to the current small bank threshold of $1.305 billion. Other commenters opposed any increase in the small bank threshold so that more banks would be governed by the general performance standard, which they found to be a better evaluation of CD activity. Still other commenters suggested various different thresholds, both higher and lower than $500 million. The OCC considered these various threshold alternatives and has increased the asset threshold for small banks in the final rule to $600 million or less, to be adjusted annually for inflation. This threshold better reflects the current state of the industry and is now consistent with the threshold for small banks included in the SBA's size standards defining small business concerns.[197]

Some commenters advocated including an intermediate small bank threshold in the final rule and raising it to a higher level, including $5 billion or $10 billion. As indicated above, the OCC agrees that the final rule should include an exception for more smaller banks. Therefore, the OCC has included in the final rule a definition for

[196] This number is based on data accessed from the OCC's Financial Institution Data Retrieval System (FINDRS) on May 14, 2020.

[197] 13 CFR 121.201.

intermediate bank, based on the current rule's definition of intermediate small bank, and has increased the asset size threshold for these banks from $1.305 million in the current CRA rule to $2.5 billion. This $2.5 billion threshold is intended to capture the same portion of the industry as captured by the intermediate small bank threshold when it was adopted in 2005.

As a result of these increases in asset size for small and intermediate banks, only banks with greater than $2.5 billion in assets are subject to the more complex general performance standards, unless a small or intermediate bank elects to opt into the general performance standards. These threshold changes therefore increase the number of banks that are exempt from the general performance standards and the data, reporting, and most of the recordkeeping requirements.

The final rule provides that to meet the small bank and intermediate bank threshold, the banks must have $600 million or $2.5 billion, respectively, or less in assets in four of the previous five calendar quarters. The OCC disagreed with a request by a commenter to use an eight-quarter lookback instead, which the commenter stated would provide adequate lead time to comply with the general performance standards. The OCC recognizes the importance of certainty regarding bank size category and applicable CRA requirements but does not believe that allowing banks to be above the next highest size threshold for two years before becoming subject to the applicable requirements is necessary. The final rule does, however, provide an intermediate bank that ceases to meet the definition of an intermediate bank two years to comply with the general performance standards-related provisions of the final rule. The OCC believe this two-year period provides an adequate transition period for intermediate banks to implement the general performance standards.

Data Collection, Recordkeeping and Reporting. Under the final rule, small banks and intermediate banks that are evaluated under the small bank and intermediate bank performance standards, respectively, are generally exempt from the enhanced data collection, recordkeeping, and reporting requirements contained in the final rule, with the exception of the requirement to collect and maintain information on retail domestic deposits, including the physical address of the depositor. The OCC declined to exempt small banks from this collection requirement. Depositor information will enable the OCC to identify the bank's assessment areas and therefore to better assess a bank's CRA performance. However, the final rule clarifies that retail domestic deposits need to be geocoded to the county level, not the census tract level.

The OCC does not think that reporting of small bank and intermediate retail domestic deposit data is necessary because the OCC will validate assessment area delineations during examinations. Therefore, the final rule does not impose any reporting requirements on banks evaluated under the small bank performance standards.

Compliance dates. The final rule clarifies that the new qualifying activities criteria section, the qualifying activities confirmation process, and the CRA desert conformation process will be effective as of the effective date of the final rule. As a result, small banks will be able to immediately take advantage of the clarity provided by these elements. To minimize confusion with respect to other applicable requirements, the final rule adopts a more streamlined compliance period that increases the transition time available. In general, banks subject to the general performance standards (banks over $2.5 billion in assets) must comply with all sections of this rule, except those related to the new qualifying activities criteria or confirmation processes, by January 1, 2023, which generally increases the compliance time for the assessment area, data collection, and recordkeeping requirements by more than one year as compared to the proposal. Small and intermediate banks must comply with the rule's assessment areas, data collection, and recordkeeping requirements, as applicable, by January 1, 2024, which generally increases the compliance time for these requirements by more than two. The final rule also provides flexibility for banks to comply with the new provisions prior to these compliance dates. The OCC believes that these transition periods will provide small and intermediate banks with adequate time to comply with the rule without delaying the improvements the rule makes to CRA implementation.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation, currently $154 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has determined that the final rule is likely to result in the expenditure by the private sector of $154 million or more. Therefore, the OCC has prepared a budgetary impact analysis and identified and considered alternative approaches. The full text of the OCC's analyses under the Unfunded Mandates Act is available at: *http://www.regulations.gov,* Docket ID OCC–2018–0008.

Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major rule.'' [198] If a rule is deemed a ''major rule'' by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[199]

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: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) 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.[200]

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

Riegle Community Development and Regulatory Improvement Act of 1994

Section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 requires that the OCC, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, considers, consistent with principles of safety and soundness and

[198] 5 U.S.C. 801 *et seq.*

[199] 5 U.S.C. 801(a)(3).

[200] 5 U.S.C. 804(2).

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.[201] The OCC has considered the changes made by this final rule and believe that the effective date of October 1, 2020, along with the transition periods included in the final rule and described above, will provide national banks, State banks, Federal branches of a foreign bank, Federal savings associations, and State savings associations with adequate time to comply with the rule's requirements.

The OCC also has considered the administrative burden of the final rule's administrative compliance requirements and addressed them by exempting small banks, defined as having assets of $600 million or less, and intermediate banks, defined as having more assets than a small bank but less than $2.5 billion in assets, from the new general performance standards and the data collection, recordkeeping, and recording requirements, with a few exceptions. In addition, as discussed above, the OCC has addressed the administrative burdens in the final rule by including transition periods for compliance with the rule of between more than two to four years, depending on the size of the bank, among other things. Further discussion of the consideration by the OCC of these administrative compliance requirements is found in other sections of the final rule's **SUPPLEMENTARY INFORMATION** section.

Effective Date

The APA[202] requires that a substantive rule must be published not less than 30 days before its effective date, unless, among other things, the rule grants or recognizes an exemption or relieves a restriction.[203] Section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that regulations issued by a Federal banking agency[204] imposing additional reporting, disclosure, or other requirements on insured depository institutions take effect on the first day of a calendar quarter that begins on or after the date of publication of the final rule, unless, among other things, the agency determines for good cause that the regulations should become effective before such time.[205] The October 1, 2020, effective date of this final rule meets both the APA and RCDRIA effective date requirements, as it will take effect at least 30 days after its publication date of June 5, 2020 and on the first day of a calendar quarter following publication, October 1, 2020.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 195

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, and under the authority of 12 U.S.C. 93a, the Office of the Comptroller of the Currency amends 12 CFR part 25 and removes part 195 as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 is revised to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

■ 2. Revise subparts A through E and add subpart D to read as follows:

Subpart A—General

Sec.
25.01 Authority, purposes, scope, and severability.
25.02 Effect of CRA performance on applications.
25.03 Definitions.

Subpart B—Qualifying Activities

25.04 Qualifying activities criteria.
25.05 Qualifying activities confirmation and illustrative list.
25.06 CRA desert confirmation.
25.07 Qualifying activities quantification.
25.08 Qualifying activities value.

Subpart C—Assessment Area

25.09 Assessment area.

Subpart D—Performance Evaluations

25.10 Performance standards and ratings, in general.
25.11 CRA evaluation measure.
25.12 Retail lending distribution tests.
25.13 General performance standards and presumptive rating.
25.14 Small and intermediate bank performance standards.
25.15 Wholesale and limited purpose bank performance standards.
25.16 Consideration of performance context.
25.17 Discriminatory and other illegal credit practices.
25.18 Strategic plan.
25.19 Assigned ratings.
25.20 State/multistate metropolitan statistical area assigned rating.

Subpart E—Data Collection, Recordkeeping, and Reporting

25.21 Data collection for banks evaluated under the general performance standards in § 25.13 or a strategic plan under § 25.18.
25.22 Retail domestic deposit data collection for small and intermediate banks evaluated under the small and intermediate bank performance standards in § 25.14.
25.23 Data collection for wholesale and limited purpose banks evaluated under the wholesale and limited purpose bank performance standards in § 25.15.
25.24 Activity location.
25.25 Recordkeeping.
25.26 Reporting for banks evaluated under the general performance standards in § 25.13, the wholesale and limited purpose bank performance standards in § 25.15, or a strategic plan under § 25.18.
25.27 Public disclosures.
25.28 Content and availability of public file.
25.29 Availability of planned evaluation schedule.
25.30 Public notice by banks.

Subpart A—General

§ 25.01 Authority, purposes, scope, and severability.

(a) *Authority.* The authority for this part is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), Congress required each appropriate Federal financial supervisory agency to assess an institution's record of meeting the credit needs of its entire community, including low- and moderate-income communities, consistent with the safe and sound operation of such institution, and take that record into account in its evaluation of an application for a deposit facility by such institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income communities, consistent with the safe and sound operation of the bank; and

[201] 12 U.S.C. 4802(a).

[202] Codified at 5 U.S.C. 551 *et seq.*

[203] 5 U.S.C. 553(d).

[204] For purposes of RCDRIA, ''Federal banking agency'' means the OCC, FDIC, and Board. *See* 12 U.S.C. 4801.

[205] 12 U.S.C. 4802(b).

(2) Providing that the OCC takes that record into account in considering certain applications.

(c) *Scope*—(1) *General.* This part applies to all banks as defined in § 25.03 except as provided in paragraphs (c)(2) and (c)(3) of this section.

(2) *Federal branches and agencies*—(i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) *Certain exempt banks.* This part does not apply to banks that do not perform commercial or retail banking services by granting credit or offering credit-related products or services to the public in the ordinary course of business, other than as incident to their specialized operations and done on an accommodation basis. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: Providing cash management-controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

(4) *Compliance dates*—(i) Banks other than small, intermediate, wholesale, and limited purpose banks must comply with §§ 25.07—25.13, 25.21, 25.25, and 25.26 by January 1, 2023.

(ii) Wholesale and limited purposes banks must comply with §§ 25.09, 25.23, 25.25, and 25.26 by January 1, 2023.

(iii) Small and intermediate banks must comply with §§ 25.09, 25.22, and 25.25, as applicable, by January 1, 2024.

(5) *Transition provision.* To provide for an orderly transition, for any CRA performance evaluation conducted on or after October 1, 2020. and before the compliance date of this part that is applicable to the bank being evaluated, the OCC may permit a bank to rely on the applicable performance standards and tests, procedures, processes, definitions or other element of:

(i) Parts 25 or 195 of this chapter, as applicable, in effect on the date prior to October 1, 2020 (as set forth in appendix C of this part); or

(ii) Part 25 set forth in this final rule.

(6) *Expiration date.* Parts 25 and 195 of this chapter that are in effect on the date prior to October 1, 2020 (as set forth in appendix C of this part) expire on January 1, 2024.

(d) *Severability.* Each section of this part is severable from the other sections of this Part. If any section or any provision of any section is held to be invalid or stayed for any reason, it is the OCC's intention that the remaining sections and provisions of this part shall continue in effect.

§ 25.02 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the OCC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

(1) The establishment of a domestic branch or non-branch deposit-taking facility;

(2) The relocation of the main office or a domestic branch;

(3) Under the Bank Merger Act (12 U.S.C. 1828(c)), the merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution;

(4) The conversion of an insured depository institution to a national bank charter;

(5) A savings association charter; and

(6) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* An applicant (other than an insured depository institution) for a national bank or a Federal savings association charter must submit with its application a description of how it will meet its CRA objectives, if applicable. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the same meaning as this term is given in 12 U.S.C. 1813.

§ 25.03 Definitions.

For purposes of this part, the following definitions apply:

Activity means a loan, investment, or service by a bank.

Affiliate has the meaning this term is given in Regulation W, 12 CFR 223.2(a) and (b), as of October 1, 2020 and includes non-member banks.

Area median income means:

(1) The median family income for the metropolitan statistical area, if a person or census tract is located in a metropolitan statistical area, or for the metropolitan division, if a person or census tract is located in a metropolitan statistical area that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or census tract is located outside a metropolitan statistical area.

Assessment area means a geographic area delineated in accordance with § 25.09.

Automated teller machine (ATM) means an automated banking facility owned or operated by, or operated exclusively for, the bank at which deposits are received, cash dispersed, or money lent.

Average means the statistical mean.

Bank means a national bank (including a Federal branch as defined in part 28 of this chapter) or a savings association, the deposits of which are insured by the FDIC pursuant to Chapter 16 of Title 12, as described in 12 U.S.C. 1813(c)(2), except as provided in § 25.01(c).

Branch means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or non-profit organization. The term ''branch'' only includes a ''domestic branch'' as that term is defined in section 3(o) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1813(o)).

Call Report means Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161.

Commitment to lend means a legally binding commitment to extend credit, such as a standby letter of credit.

Community Development Financial Institution has the same meaning as this term is given in 12 U.S.C. 4702(5).

Community development investment means a lawful investment, membership share, deposit, legally binding commitment to invest that is reported on the Call Report, Schedule RC–L, or monetary or in-kind donation that meets the criteria of § 25.04(c).

Community development loan means a loan, line of credit, or commitment to lend that meets the criteria of § 25.04(c).

Community development services means bank employee time spent volunteering as a representative of the

bank on activities that meet the criteria of § 25.04(c) or supporting activities that meet the criteria of § 25.04(c)(2), (11). A bank employee may receive expense reimbursement for volunteer time related to the community development activity.

Compensation means the median hourly compensation value (*i.e.,* total salaries and benefits divided by full-time equivalent employees) for the banking industry based on aggregate Call Report data for median salaries and employee benefits from Schedule RI, Item 7.a and the median number of full-time equivalent employees from Schedule RI Memorandum Item 5.

Consumer loan means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 6, Loans to individuals for household, family, and other personal expenditures other than overdraft plans that is a:

(1) *Other revolving credit plan,* which is an extension of credit to an individual for household, family, and other personal expenditures arising from revolving credit plans not accessed by credit cards;

(2) *Automobile loan,* which is a consumer loan extended for the purpose of purchasing new and used passenger cars and other vehicles such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use; and

(3) *Other consumer loan,* which is any other loan to an individual for household, family, and other personal expenditures (other than those that meet the definition of a ''loan secured by real estate'' and other than those for purchasing or carrying securities), including *low-cost education loans,* which is any private education loan, as defined in section 140(a)(8) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

CRA desert means an area that the OCC has confirmed to be a CRA desert under § 25.06 because it has significant unmet community development or retail lending needs and where:

(1) Few banks have branches or non-branch deposit-taking facilities;

(2) There is less retail or community development lending than would be expected based on demographic or other factors; or

(3) The area lacks community development organizations or infrastructure.

CRA-eligible business means a business that has gross annual revenues of no greater than $1.6 million. The OCC will adjust the $1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

CRA-eligible farm means a farm with gross annual revenues of no greater than $1.6 million. The OCC will adjust the $1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

Distressed area means a middle-income census tract identified by the OCC that meets one or more of the following conditions:

(1) An unemployment rate of at least 1.5 times the national average;

(2) A poverty rate of 20 percent or more; or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

Essential community facility means a public facility, including, but not limited to, a school, library, park, hospital or health care facility, and public safety facility.

Essential infrastructure means:

(1) Public infrastructure, including, but not limited to, public roads, bridges, tunnels; and

(2) Essential telecommunications infrastructure, mass transit, water supply and distribution, utilities supply and distribution, sewage treatment and collection, and industrial parks.

Family farm has the same meaning as the term is given by the Farm Service Agency of the U.S. Department of Agriculture in 7 CFR 761.2(b) as of the effective date of this rule.

Financing means permissible equity or debt facilities, such as loans, lines of credit, bonds, private funds, securities, or other permissible investments.

Home mortgage loan means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part I, specifically:

(1) Item 1.a.(1) 1–4 family residential construction loans;

(2) Item 1.c Loans secured by 1–4 family residential properties (includes closed-end and open-end loans); or

(3) Item 1.d Loans secured by multifamily (5 or more) residential properties.

Income levels are:

(1) *Low-income,* which means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in a census tract.

(2) *Moderate-income,* which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent in a census tract.

(3) *Middle-income,* which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent in a census tract.

(4) *Upper-income,* which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in a census tract.

Indian country means an area that is

(1) Covered by 18 U.S.C. 1151; or

(2) A Tribal Census Tract, an Oklahoma Tribal Statistical Area, a Tribal Designated Statistical Area, an Alaskan Native Village Statistical Area, or an American Indian Joint-Use Area, as those terms are defined by the Census Bureau.

In-kind donation means a contribution of goods, commodities, or other non-monetary resources.

Intermediate bank means a bank with assets that exceed the small bank asset size threshold provided in the small bank definition, as adjusted, and that had assets of $2.5 billion or less in four of the previous five calendar quarters; the dollar figures in this definition shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest $100,000.

Limited purpose bank means a bank that offers only a narrow product line (such as automobile loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 25.15(b).

Major retail lending product line means a bank's retail lending product line that for the two years prior to the beginning of the evaluation period:

(1) Composed at least 15 percent of the bank's dollar volume of total retail loan originations and was the first or second largest retail lending product line by dollar volume; and

(2) At the bank's option, composed at least 15 percent of the bank's dollar volume of total retail loan originations.

Low-income credit union has the same meaning as this term is given in 12 CFR 701.34.

Metropolitan division has the same meaning as published in the Office of Management and Budget's Standards for Delineating Metropolitan and Micropolitan Statistical Areas or successor publication thereof.

Metropolitan statistical area has the same meaning as published in the Office of Management and Budget's Standards for Delineating Metropolitan and Micropolitan Statistical Areas or successor publication thereof.

Military bank means a bank whose business predominately consists of serving the needs of military personnel who serve or have served in the armed forces (including the U.S. Army, Navy, Marine Corp., Air Force, and Coast Guard) or dependents of military personnel. A bank whose business predominantly consists of serving the needs of military personnel or their dependents means a bank whose most important customer group is military personnel or their dependents.

Minority depository institution means a depository institution as defined in 12 U.S.C. 2907(b)(1).

Monetary donation means a grant, monetary contribution, or monetary donation.

Non-branch deposit-taking facility means a non-branch banking facility owned or operated by or operated exclusively for the bank and available to the general public, which is authorized to take deposits and is located in any state or territory of the United States of America.

Nonmetropolitan area means any area that is not located in a metropolitan statistical area.

Other tribal and native lands means State Designated Tribal Statistical Areas, as defined by the Census Bureau, and Hawaiian Home Lands.

Partially means 50 percent or less of the dollar value of the activity or of the individuals or census tracts served by the activity.

Primarily means:

(1) Greater than 50 percent of the dollar value of the activity or of the individuals or census tracts served by the activity; or

(2) The express, bona fide intent, purpose, or mandate of the activity as stated, for example in a prospectus, loan proposal, or community action plan.

Qualifying activity means an activity that helps to meet the credit needs of a bank's entire community, including low- and moderate-income individuals and communities, in accordance with § 25.04.

Qualifying loan means a retail loan that meets the criteria in § 25.04(b) or a community development loan that meets the criteria in § 25.04(c).

Retail domestic deposit means a ''deposit'' as defined in section 3(l) of the FDIA (12 U.S.C. 1813(l)) and held in the United States that is:

(1) Reported on Schedule RC–E of the Call Report, as item 1 or item 3; or

(2) A non-brokered ''reciprocal deposit'' as defined in 12 U.S.C. 1831(f)(i)(2)(E) for the institution sending the non-brokered ''reciprocal deposit'' but *retail domestic deposit* does not mean:

(i) A deposit;

(A) Obtained, directly or indirectly, from or through the mediation or assistance of a ''deposit broker'' as defined in section 29 of the FDIA (12 U.S.C. 1831f(g));

(B) Originated from an affiliated or non-affiliated broker-dealer sweep transaction;

(C) Held in a Health Savings Account established in accordance with 26 U.S.C. 223;

(D) Held in a prepaid card account established in accordance with 12 CFR 1005.1 *et seq.;* or

(ii) A non-brokered reciprocal deposit as defined in 12 U.S.C. 1831(f)(i)(2)(E) for the institution receiving a non-brokered ''reciprocal deposit.''

Retail lending product line means:

(1) The home mortgage loan product line, which includes all home mortgage loans;

(2) The small loan to a business product line, which includes all small loans to businesses;

(3) The small loan to a farm product line, which includes all small loans to farms;

(4) The other revolving credit plan product line, which includes all consumer other revolving credit plans;

(5) An automobile loan product line, which includes all automobile loans; or

(6) The other consumer loan product line, which includes all other consumer loans.

Retail loan means a home mortgage loan, small loan to a business, small loan to a farm, or consumer loan.

Small bank means a bank that had assets of $600 million or less in four of the previous five calendar quarters; the dollar figures in this definition shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest $100,000.

Small loan to a business means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 1.e, Secured by nonfarm nonresidential properties, or Item 4, Commercial and industrial loans, and of no greater than $1.6 million. The OCC will adjust the $1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

Small loan to a farm means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 1.b, Secured by farmland, or Item 3, Loans to finance agricultural production and other loans to farmers, and of no greater than $1.6 million. The OCC will adjust the $1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

Underserved area means a middle-income census tract:

(1) Identified by the OCC as meeting the criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the census tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The OCC will use as the basis for these designations the ''urban influence codes,'' numbered ''7,'' ''10,'' ''11,'' and ''12,'' maintained by the Economic Research Service of the U.S. Department of Agriculture; or

(2) Identified by the OCC as:

(i) Not having a branch of any bank within:

(A) 2 miles from the center of the census tract if it is an urban census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(B) 5 miles from the center of the census tract if it is a mixed census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(C) 10 miles from the center of the census tract if it is a rural census tract, as defined by the Federal Financial Institutions Examination Council Census data; or

(D) 5 miles from the center of the census tract if the census tract is an island area, as defined by the Federal Financial Institutions Examination Council Census data; and

(ii) Not having any branch within the census tract.

Wholesale bank means a bank that is not in the business of extending home mortgage, small loans to businesses, small loans to farms, or consumer loans

to retail customers, and for which a designation is in effect, in accordance with § 25.15(b).

Women's depository institution means a depository institution as defined in 12 U.S.C. 2907(b)(2).

Subpart B—Qualifying Activities

§ 25.04 Qualifying activities criteria.

(a) *General*—(1) A retail loan, a community development loan, a community development investment, or a community development service that helps to meet the credit needs of a bank's entire community, including low- and moderate-income communities, is a qualifying activity if it meets the criteria in this section at the time the activity is originated, made, or conducted.

(2) Notwithstanding paragraph (a)(1) of this section, a loan or investment that was a qualifying activity and is subsequently sold remains a qualifying activity unless the OCC determined prior to the sale that the activity is no longer a qualifying activity.

(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, other than home mortgage loans or consumer loans provided to middle- or upper-income individuals in low- or moderate-income census tracts, an activity that would have received positive consideration in a CRA performance evaluation on the date prior to October 1, 2020 and is on a bank's balance sheet on the effective date of this rule is a qualifying activity.

(b) *Retail loans.* A home mortgage loan, small loan to a business, small loan to a farm, or consumer loan is a qualifying activity if it is:

(1) Provided to a:

(i) Low- or moderate-income individual or family;

(ii) CRA-eligible business; or

(iii) CRA-eligible farm;

(2) Located in Indian country or other tribal and native lands;

(3) A small loan to a business located in a low- or moderate-income census tract; or

(4) A small loan to a farm located in a low- or moderate-income census tract.

(c) *Community development loans, community development investments, and community development services.* A community development loan, community development investment, or community development service is a qualifying activity if it provides financing for or supports:

(1) Affordable housing, which means:

(i) Rental housing:

(A) That is likely to be partially or primarily inhabited by low- or moderate-income individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income;

(B) That is partially or primarily inhabited by low- or moderate-income individuals or families as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government; or

(C) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for low- or moderate-income individuals or families; or

(ii) Owner-occupied housing purchased, refinanced, or improved by or on behalf of low- or moderate-income individuals or families, except for home mortgage loans provided directly to individuals or families;

(2) Another bank's community development loan, community development investment, or community development service;

(3) Community support services which means activities, such as child care, education, workforce development and job training programs, health services, and housing services, that partially or primarily serve or assist low- or moderate-income individuals or families;

(4) Economic development, which means activities that provide financing for or support businesses or farms, including:

(i) Activities that promote job creation or job retention partially or primarily for low- or moderate-income individuals;

(ii) Federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily serve small businesses or small farms as those terms are defined in the programs, projects, or initiatives;

(iii) Retaining existing, or attracting new, businesses, farms, or residents to low- or moderate-income census tracts, underserved areas, distressed areas, designated disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands;

(iv) A Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a Small Business Investment Company, as described in 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture Rural Business Investment Company, as defined in 7 CFR 4290.50; or

(v) Technical assistance and supportive services, such as shared space, technology, or administrative assistance for businesses or farms that meet the size eligibility standards of the Small Business Investment Company program, as described in 13 CFR part 107;

(5) Essential community facilities that partially or primarily serve:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands;

(6) Essential infrastructure that partially or primarily serves:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands;

(7) A family farm's:

(i) Purchase or lease of farm land, equipment, and other farm-related inputs for the family farm's use in operating the farm;

(ii) Receipt of technical assistance and supportive services for the family farm's own production, such as shared space, technology, or administrative assistance through an intermediary; or

(iii) Sale and trade of family farm products grown or produced by the family farm;

(8) Federal, state, local, or tribal government programs, projects, or initiatives that:

(i) Partially or primarily serve low- or moderate-income individuals or families; or

(ii) Are consistent with a bona fide government revitalization, stabilization, or recovery plan for a low- or moderate-income census tract; a distressed area; an underserved area; a disaster area; or Indian country or other tribal and native lands;

(9) Financial literacy programs or education or homebuyer counseling;

(10) Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country or other tribal and native lands;

(11) Qualified opportunity funds, as defined in 26 U.S.C. 1400Z–2(d)(1), that benefit low- or moderate-income qualified opportunity zones, as defined in 26 U.S.C. 1400Z–1(a); or

(12) Other activities and ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, Community Development Financial Institution, or low-income credit union, if the activity helps to meet the credit needs of local

communities in which these institutions are chartered, including activities that indirectly help to meet community credit needs by promoting the sustainability and profitability of those institutions and credit unions.

§ 25.05 Qualifying activities confirmation and illustrative list.

(a) *Qualifying activities list.* The OCC maintains a publicly available illustrative list at *www.occ.gov* of non-exhaustive examples of qualifying activities that meet, and may include activities that do not meet, the criteria in § 25.04.

(b) *Confirmation of a qualifying activity.* An interested party may request that the OCC confirm that an activity meets the criteria in § 25.04 and is a qualifying activity in accordance with paragraph (c) of this section.

(1) When the OCC confirms that an activity is consistent with the criteria in § 25.04, the OCC will notify the requestor, publish its decision, and may add the activity to the list of activities that meet the qualifying activities criteria described in paragraph (a) of this section, incorporating any conditions imposed, if applicable.

(2) When the OCC determines that an activity is not consistent with the criteria in § 25.04, the OCC will notify the requestor, publish its decision, and may add this activity to the list of activities that do not meet the qualifying activities criteria described in § 25.04.

(c) *Process*—(1) An interested party may request that the OCC confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form available on *www.occ.gov.*

(2) In responding to a confirmation request that an activity is consistent with the criteria in § 25.04, the OCC will consider:

(i) The information on the Qualifying Activity Confirmation Request Form;

(ii) Whether the activity is consistent with the safe and sound operation of the bank; and

(iii) Any other information the OCC deems relevant.

(3) The OCC may impose conditions on its confirmation to ensure that an activity is consistent with the criteria in § 25.04.

(4) Unless notified by the OCC that it is extending the confirmation period to 90 days, an activity is confirmed as a qualifying activity if the requestor is not informed of an OCC objection within 60 days of submission of a complete Qualifying Activity Confirmation Request Form.

(d) *Modifying the qualifying activities list.* In addition to updating the list in paragraph (a) of this section on a periodic basis in response to requests for confirmation described in paragraph (b) of this section, the OCC will publish the qualifying activities list no less frequently than every five years for notice and comment to determine whether the list should change. If the OCC determines that a qualifying loan or community development investment no longer meets the criteria in § 25.04, that loan or community development investment will not be considered a qualifying activity for any subsequent purchasers.

§ 25.06 CRA desert confirmation.

(a) *CRA desert list.* The OCC maintains a publicly available illustrative list at *www.occ.gov* of areas that were consistent with the definition in § 25.03 at the time a bank requested confirmation of a CRA desert.

(b) *Confirmation of a CRA desert.* A bank must request that the OCC confirm that an area is a CRA desert in accordance with paragraph (c) of this section before receiving the CRA desert multiplier in § 25.08(b) in an evaluation period, even if that area is on the CRA desert list in paragraph (a) of this section.

(1) When the OCC confirms that an area is consistent with the definition of CRA desert in § 25.03, the OCC will notify the requestor and may add this area to the list of CRA deserts as described in paragraph (a) of this section.

(2) When the OCC determines that an area is not consistent with the definition of CRA desert in § 25.03, the OCC will notify the requestor.

(c) *Process*—(1) A bank may request that the OCC confirm that an area is a CRA desert by submitting a request to the OCC detailing why the area is consistent with the definition of CRA desert in § 25.03.

(2) In responding to a confirmation request that an activity is consistent with the definition of CRA desert in § 25.03, the OCC will consider:

(i) The information provided by the bank; and

(ii) Any other information the OCC deems relevant.

§ 25.07 Qualifying activities quantification.

(a) *Community development service quantification.* The quantified dollar value of a community development service is the compensation *multiplied by* the total number of hours one or more the employees spent performing the service, as adjusted by paragraph (e) of this section.

(b) *In-kind donation quantification.* The quantified dollar value of an in-kind donation is the fair market value of the donation, as adjusted by paragraph (e) of this section.

(c) *Monetary donation quantification.* The quantified dollar value of a monetary donation is the actual dollar value of the donation, as adjusted by paragraph (e) of this section.

(d) *Qualifying loan and other community development investment quantification.* The quantified dollar value of a qualifying loan or a community development investment not included in paragraph (b) or (c) of this section, is:

(1) Except for qualifying loans in paragraph (d)(2), the average of the dollar value, as of the close of business on the last day of the month, of:

(i) The outstanding balance of a loan or investment, as adjusted by paragraph (e) of this section;

(ii) Any legally binding commitment to invest, to the extent not reflected in paragraph (d)(1)(i) of this section and as adjusted by paragraph (e) of this section; and

(iii) Any commitment to lend, to the extent not reflected in paragraph (d)(1)(ii) of this section and as adjusted in paragraph (e) of this section; or

(2) For qualifying retail loans sold within 365 days of origination, the dollar value of the loan at origination.

(3) For community development investment funds that are syndicated or sponsored by the bank for the purpose of obtaining financing from other investors and support one or more projects that are eligible for low-income housing tax credits or new markets tax credits:

(i) The total dollar value of the fund in the year of origination; and

(ii) One half of the total dollar value of the portion of the fund that is sold in the year that it is sold.

(e) *Portion of partially qualifying activities.* The quantified dollar value of a partially qualifying activity is calculated by *multiplying* the percentage of the activity that is qualifying by the full dollar value of the qualifying activity quantified under paragraphs (a)—(d) of this section.

§ 25.08 Qualifying activities value.

(a) *Bank's qualifying activities value.* A bank evaluated under § 25.13 calculates its qualifying activities value annually based on the quantified dollar value of all qualifying activities originated, made, performed, or on the bank's balance sheet during the year. The qualifying activities value equals the *sum,* during a given annual period, of:

(1) The quantified dollar value of qualifying loans and community

development investments originated, made, or performed by the bank during the year or on the bank's balance sheet during the year, as adjusted in paragraph (b) of this section; and

(2) The aggregate:

(i) Quantified dollar value of community development services conducted during the year, as adjusted in paragraph (b) of this section;

(ii) Quantified dollar value of in-kind donations made during the year, as adjusted in paragraph (b) of this section; and

(iii) Quantified dollar value of monetary donations made during the year, as adjusted in paragraph (b) of this section.

(b) *Multipliers*—(1) To be eligible for the multipliers in paragraphs (b)(2) and (b)(3) of this section, the quantified dollar value of a bank's current evaluation period community development loans, community development investments, and community development services must be approximately equal to the quantified dollar value of these activities considered in the bank's prior evaluation period. The quantified dollar value of qualifying activities originated, made, conducted or purchased by a bank during the evaluation period after this requirement is met will be adjusted using the multipliers in paragraphs (b)(2)–(b)(3) of this section, as applicable.

(2) When calculating the bank's qualifying activity value or an assessment area qualifying activities value, the quantified dollar value of the following qualifying activities, except for activities quantified under § 25.07(d)(3), will be adjusted by *multiplying* the quantified dollar value by 2.

(i) Activities provided to or that support minority depository institutions, women's depository institutions, Community Development Financial Institutions, and low-income credit unions, except activities related to mortgage-backed securities;

(ii) Other community development investments, except community development investments in mortgage-backed securities and municipal bonds;

(iii) Other community development services;

(iv) Other affordable housing-related community development loans; and

(v) Retail loans generated by branches in low- and moderate-income census tracts.

(3) In addition to any multiplier under paragraph (b)(2) of this section, when calculating the bank's qualifying activities value or an assessment area qualifying activities value, the quantified dollar value of the qualifying activities in CRA deserts, except for activities quantified under § 25.07(d)(3), will be adjusted by multiplying the quantified dollar value by 2.

(4) Qualifying activities that receive a multiplier under paragraphs (b)(2) and (b)(3) of this section may be eligible for a multiplier of up to 4 times their quantified dollar value based on the OCC's determination of the activity's responsiveness, innovativeness, or complexity.

(c) *Assessment area qualifying activities value.* A bank evaluated under § 25.13 calculates its assessment area qualifying activities value for each assessment area by using the process described in paragraph (a) of this section for qualifying activities located in the assessment area and originated, made, or performed by the bank during the year or were on the bank's balance sheet during the year.

Subpart C—Assessment Area

§ 25.09 Assessment area.

(a) *General.* A bank must delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The OCC reviews the delineation for compliance with the requirements of this section. Unless pursuant to an approved application covered under § 25.02(a)(3) for a merger or consolidation with an insured depository institution, an assessment area delineation can only change once a year and must not change within the annual period used to determine an assessment area CRA evaluation measure under § 25.11(c).

(b) *Facility-based assessment area(s)*—(1) A bank must delineate an assessment area encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility that is not an ATM as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Assessment areas delineated under this paragraph may contain one or more of these facilities and may also contain one or more deposit-taking ATMs.

(2) A bank may delineate an assessment area encompassing locations where it maintains a deposit-taking ATM as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Assessment areas delineated under this paragraph may contain one or more of these facilities and may also contain one or more of the facilities in paragraph (b)(1) of this section.

(3) A facility-based assessment area must be delineated to consist of:

(i) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(ii) The whole nonmetropolitan area of a state;

(iii) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made); or

(iv) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(4) A bank may delineate its facility-based assessment area(s) in the smallest geographic area where it maintains a main office, branch, or non-branch deposit-taking facility or may delineate a larger assessment area that includes these locations, as provided in paragraph (b)(3) of this section.

(5) A facility-based assessment area may not extend beyond a metropolitan statistical area or state boundary unless the assessment area is located in a multistate metropolitan statistical area. If a bank serves a geographic area that extends beyond a state boundary, the bank must delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends beyond a metropolitan statistical area boundary, the bank must delineate separate assessment areas for the areas inside and outside the metropolitan statistical area.

(c) *Deposit-based assessment area(s)*—(1) A bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas where it receives 5 percent or more of its retail domestic deposits.

(2) A deposit-based assessment area must be delineated to consist of:

(i) One whole state;

(ii) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(iii) The whole nonmetropolitan area of a state;

(iv) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the

calendar year in which the delineation is made);

(v) The remaining geographic area of a state, metropolitan statistical area, nonmetropolitan area, or metropolitan division other than where it has a facility-based assessment area; or

(vi) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(3) A bank may delineate its deposit-based assessment area(s) in the smallest geographic area where it receives 5 percent or more of its retail domestic deposits or may delineate a larger assessment area that includes these geographic areas, as provided in paragraph (b)(2) of this section.

(d) *Limitations on delineation of assessment areas.* A bank's assessment areas must not:

(1) Reflect illegal discrimination; or

(2) Arbitrarily exclude low- or moderate-income census tracts, taking into account the bank's size and financial condition.

(e) *Military banks.* Notwithstanding the requirements of this section, a military bank's assessment area will consist of the entire United States of America and its territories. A military bank will only be evaluated under § 25.13(c).

(f) *Banks evaluated under strategic plans.* A bank evaluated under a strategic plan will delineate its assessment area(s) in accordance with the requirements of § 25.18(g)(2).

(g) *Use of assessment area(s).* The OCC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the OCC determines that the assessment area(s) do not comply with the requirements of this section.

Subpart D—Performance Evaluations

§ 25.10 Performance standards and ratings, in general.

(a) *Performance standards.* The OCC assesses the CRA performance of a bank in an examination as follows:

(1) *General performance standards*—(i) The OCC assesses the CRA performance of a bank other than banks described in paragraphs (a)(2), (a)(3), and (a)(4) of this section based on the bank's application of the general performance standards and determination of its presumptive ratings under § 25.13.

(ii) The OCC determines the assigned ratings for a bank evaluated under § 25.13 as provided in § 25.19.

(iii) The OCC determines the state or multistate metropolitan statistical area ratings for a bank evaluated under § 25.13 as provided in § 25.20.

(2) *Small bank and intermediate bank performance standards*—(i) The OCC applies the small bank and intermediate bank performance standards, as provided in § 25.14, in evaluating the performance of a small bank or intermediate bank, unless the bank is evaluated under an approved strategic plan as described under paragraph (a)(4) of this section or elects to opt in to the general performance standards under paragraph (b) of this section.

(ii) The OCC assigns a small bank evaluated under the small bank and intermediate bank performance standards in § 25.14 lending test and bank ratings as provided for in Appendix A of this part.

(iii) The OCC assigns an intermediate bank evaluated under the small bank and intermediate bank performance standards in § 25.14 lending test, community development test, and bank ratings as provided in Appendix A of this part.

(3) *Wholesale and limited purpose bank performance standards*—(i) The OCC applies the wholesale and limited purpose bank performance standards, as provided in § 25.15, in evaluating the performance of a wholesale or limited purpose bank, unless the bank is evaluated under an approved strategic plan as described under paragraph (a)(4) of this section or elects to opt in to the general performance standards under paragraph (b) of this section.

(ii) The OCC assigns a wholesale or limited purpose bank evaluated under the wholesale and limited purpose bank performance standards in § 25.15 community development test and bank ratings as provided for in Appendix A of this part.

(4) *Strategic plan.* The OCC evaluates the performance of a bank under a strategic plan if the bank submits, and the OCC approves, a strategic plan as provided in § 25.18.

(b) *General performance standards opt in.* A small, intermediate, wholesale, or limited purpose bank may elect to opt in to be evaluated under the general performance standards described in paragraph (a)(1) of this section. A small, intermediate, wholesale, or limited purpose bank that elects to be evaluated under the general performance standards must collect, maintain, and report the data required for other banks under §§ 25.21, 25.25, and 25.26. Once a small, intermediate, wholesale, or limited purpose bank elects to opt in, it must complete at least one evaluation period under the general performance standards and may elect no more than once to opt out of the general performance standards. A small, intermediate, wholesale, or limited purpose bank that opts out from the general performance standards will revert to being evaluated according to the corresponding performance standards described in paragraphs (a)(2) and (a)(3) of this section, unless the bank is evaluated under an approved strategic plan as described under (a)(4) of this section.

(c) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates that banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income census tracts or individuals, only if consistent with safe and sound operations.

§ 25.11 CRA evaluation measure.

(a) *CRA evaluation measure.* A bank evaluated as described in § 25.13 will determine its bank and assessment area CRA evaluation measures annually as part of its CRA performance evaluation.

(b) *Determination of the bank's CRA evaluation measure.* A bank's CRA evaluation measure is the *sum of:*

(1) The bank's annual qualifying activities values calculated under § 25.08(a) *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual qualifying activities value; and

(2) The number of the bank's branches located in or that serve low- or moderate-income census tracts, distressed areas, underserved areas, and Indian country or other tribal and native lands *divided by* its total number of branches as of the close of business on the last day of the same period used to calculate the annual qualifying activities value *multiplied by* .02.

(3) If the value calculated in paragraph (b)(2) of this section exceeds .01, then the bank's CRA evaluation measure is the *sum of* the value calculated in paragraph (b)(1) of this section and .01.

(c) *Determination of the assessment area CRA evaluation measure.* A bank's assessment area CRA evaluation measure is determined in each assessment area and is the *sum of:*

(1) The bank's annual assessment area qualifying activities value calculated under § 25.08(c); *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the

close of business on the last day of each quarter for the same period used to calculate the annual assessment area qualifying activities value; and

(2) The number of the bank's branches located in or that serve low- or moderate-income census tracts, distressed areas, underserved areas, and Indian country or other tribal and native lands in the assessment area *divided by* its total number of branches in the assessment area as of the close of business on the last day of the same period used to calculate the annual assessment area qualifying activities value *multiplied by* .02.

(3) If the value calculated in paragraph (c)(2) of this section exceeds .01, then the bank's assessment area CRA evaluation measure is the *sum of* the value calculated in paragraph (c)(1) of this section and .01.

(d) *Average annual CRA evaluation measures.* For each evaluation period, a bank will calculate the average of its:

(1) Annual CRA evaluation measures for each year in the evaluation period; and

(2) Annual assessment area CRA evaluation measures for each year in the evaluation period, separately for each assessment area.

§ 25.12 Retail lending distribution tests.

(a) *General.* In each assessment area, for a bank evaluated as described in § 25.13 the OCC will apply a:

(1) Geographic distribution test for its home mortgage product line, small loan to a business product line, or small loan to a farm product line if those product lines are major retail lending product lines with 20 or more originations per year in the assessment area during the evaluation period; and

(2) Borrower distribution test for each major retail lending product line with 20 or more originations per year in the assessment area during the evaluation period.

(b) *Geographic distribution test*—(1) *Home mortgage product line.* The OCC determines whether a bank passes the geographic distribution test for the home mortgage product line by comparing the bank's home mortgage loans originated in low- and moderate-income tracts in the assessment area as a percentage of the bank's home mortgage loans originated in the assessment area to either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator.* The geographic demographic comparator is the percentage of owner-occupied housing units in the assessment area that are in low- and moderate-income census tracts.

(ii) *Geographic peer comparator.* The geographic peer comparator is all peer home mortgage loans originated in low- and moderate-income areas in the assessment area as a percentage of all peer home mortgage loans in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(2) *Small loan to a business product line.* The OCC determines whether a bank passes the geographic distribution test for the small loan to a business product line by comparing the bank's small loans to businesses originated in low- or moderate-income census tracts in the assessment area as a percentage of the bank's small loans to businesses originated in the assessment area to either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator.* The geographic demographic comparator is the percentage of businesses in the assessment area that are in low- and moderate-income census tracts.

(ii) *Geographic peer comparator.* The geographic peer comparator is all peer small loans to businesses originated in low- and moderate-income census tracts in the assessment area as a percentage of all peer small loans to businesses originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(3) *Small loan to a farm product line.* The OCC determines whether a bank passes the geographic distribution test for the small loan to a farm product line by comparing the bank's small loans to farms originated in low- or moderate-income census tracts in the assessment area as a percentage of the bank's small loans to farms originated in the assessment area to the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator.* The geographic demographic comparator is the percentage of farms in the assessment area that are in low- and moderate-income census tracts.

(ii) *Geographic peer comparator.* The geographic peer comparator is all peer small loans to farms originated in low- and moderate-income census tracts in the assessment area as a percentage of all peer small loans to farms originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(c) *Borrower distribution test*—(1) *Home mortgage lending product line.* The OCC determines whether a bank passes the borrower distribution test for a home mortgage lending product line by comparing the bank's home mortgage loans originated to low- and moderate-income families in the assessment area as a percentage of the bank's home mortgage loans originated in the assessment area to either the associated borrower demographic comparator or the associated borrower peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of low- and moderate-income families in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer home mortgage loans originated to low- or moderate-income families in the assessment area as a percentage of all peer home mortgage loans originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(2) *Automobile lending product line, other revolving credit plan product line, or other consumer loan product line.* The OCC determines whether a bank passes the borrower distribution test for the automobile lending product line, other revolving credit plan product line, or other consumer loan product line by comparing the bank's product line loans to low- and moderate-income households in the assessment area as a percentage of the bank's product line loans originated in the assessment area to either the associated demographic borrower comparator or the associated peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of low- and moderate-income households in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer product line loans originated to low- or moderate-income households as a percentage of all peer product line loans originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(3) *Small loan to a business product line.* The OCC determines whether a bank passes the borrower distribution test for the small loan to a business product line by comparing the bank's small loans to businesses originated to CRA-eligible businesses in the assessment area as a percentage of the bank's small loans to businesses originated in the assessment area to either the associated demographic

borrower comparator or the associated peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of CRA-eligible businesses in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer small loans to businesses to CRA-eligible businesses originated in the assessment area as a percentage of all small loans to businesses originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(4) *Small loan to a farm product line.* The OCC determines whether a bank passes the borrower distribution test for the small loan to a farm product line by comparing the bank's small loans to farms originated to CRA-eligible farms in the assessment area as a percentage of the bank's small loans to farms originated in the assessment area to either the associated demographic borrower comparator or the associated peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of CRA-eligible farms in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer small loans to farms to CRA-eligible farms originated in the assessment area as a percentage of all peer small loans to farms, where peers are all banks that are evaluated under the general performance standards in § 25.13.

§ 25.13 General performance standards and presumptive rating.

(a) *General.* The bank's presumptive rating and its assessment area presumptive rating(s) for banks assessed under this section are determined by evaluating whether a bank has met all the performance standards associated with a given rating category. A bank will use the performance standards in effect on the first day of its evaluation period for the duration of its evaluation period, unless the bank elects to use performance standards published later during the evaluation period. If the bank elects to use a later-published performance standard, that performance standard will apply during the entire evaluation period.

(b) *Performance standards adjustments.* The OCC will periodically adjust the performance standards.

(1) *Factors considered.* When adjusting the performance standards, the OCC will consider factors such as the level of qualifying activities conducted by all banks, market conditions, and unmet needs and opportunities.

(2) *Public notice and comment.* The OCC will provide for a public notice and comment period on any proposed adjustments to the performance standards prior to finalizing the adjustments.

(c) *Bank performance standards*—(1) *Outstanding.* The outstanding performance standards are:

(i) *CRA evaluation measure.* The bank's average annual CRA evaluation measure during the evaluation period is outstanding;

(ii) *Assessment area ratings*—(A) Except as provided in paragraph (c)(1)(ii)(B) of this section, the bank received an assigned rating of outstanding in—

(1) 80 percent of its assessment areas; and

(2) Assessment areas from which it receives 80 percent of its retail domestic deposits that it receives from its assessment areas; and

(B) For a bank with five or fewer assessment areas, the bank received an assigned rating of outstanding in

(1) 50 percent of its assessment areas; and

(2) Assessment areas from which it receives 80 percent of its retail domestic deposits that it receives from its assessment areas.

(iii) *Community development minimum.* The total quantified dollar value of community development loans and community development investments conducted during the evaluation period, including any applicable multipliers from § 25.08(b), *divided by* the average quarterly value of the bank's total retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period is outstanding.

(2) *Satisfactory.* The satisfactory performance standards are:

(i) *CRA evaluation measure.* The bank's average annual CRA evaluation measure during the evaluation period is satisfactory.

(ii) *Assessment area ratings*—(A) Except as provided in paragraph (c)(2)(ii)(B) of this section, the bank received an assigned rating of at least satisfactory in

(1) 80 percent of its assessment areas; and

(2) Assessment areas from which the bank receives at least 80 percent of its retail domestic deposits that it receives from its assessment areas; and

(B) For a bank with five or fewer assessment areas the bank received an assigned rating of at least satisfactory in

(1) 50 percent of its assessment areas; and

(2) Assessment areas from which the bank receives 80 percent of its retail domestic deposits that it receives from its assessment areas.

(iii) *Community development minimum.* The total quantified dollar value of community development loans and community development investments conducted during the evaluation period, including any applicable multipliers from § 25.08(b), divided by the average quarterly value of the bank's total retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period is satisfactory.

(3) *Needs to improve.* The needs to improve performance standard is an average annual CRA evaluation measure during the evaluation period that needs to improve.

(4) *Substantial noncompliance.* The substantial noncompliance standard is an average annual CRA evaluation measure during the evaluation period that is substantially noncompliant.

(d) *Assessment area performance standards*—(1) *Outstanding.* The assessment area outstanding performance standards are:

(i) *Retail lending distribution tests.* The bank must pass both the geographic and borrower distribution tests for the major retail lending product lines evaluated in § 25.12;

(ii) *CRA evaluation measure.* The bank's average annual assessment area CRA evaluation measures during the evaluation period is outstanding; and

(iii) *Community development minimum.* The quantified dollar value of community development loans and community development investments conduct in the assessment area during the evaluation period, including any applicable multipliers from § 25.08(b), *divided by* the average quarterly value of the bank's retail domestic deposits received from the assessment area as of the close of business on the last day of each quarter of the evaluation period is outstanding.

(2) *Satisfactory.* The assessment area satisfactory performance standards are:

(i) *Retail lending distribution tests.* The bank must pass both the geographic and borrower distribution tests for the major retail lending product lines evaluated in § 25.12;

(ii) *CRA evaluation measure.* The bank's average assessment area CRA evaluation measure during the evaluation period is satisfactory; and

(iii) *Community development minimum.* The quantified dollar value of community development loans and community development investments conducted in the assessment area during the evaluation period, including any applicable multipliers from § 25.08(b), *divided by* the average quarterly value of

the bank's retail domestic deposits received from the assessment area as of the close of business on the last day of each quarter of the evaluation period is satisfactory.

(3) *Needs to improve.* The assessment area needs to improve performance standard is an average assessment area CRA evaluation measure during the evaluation period that needs to improve.

(4) *Substantial noncompliance.* The assessment area substantial noncompliance performance standard is an average assessment area CRA evaluation measure during the evaluation period that is substantially noncompliant.

§ 25.14 Small and intermediate bank performance standards.

(a) *Performance criteria*—(1) *Small banks.* The OCC evaluates the record of a small bank of helping to meet the credit needs of its assessment area(s) pursuant to the criteria in paragraph (b) of this section.

(2) *Intermediate banks.* The OCC evaluates the record of an intermediate bank of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's or intermediate bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other retail and community development lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or community development investments;

(2) The percentage of loans and, as appropriate, other retail and community development lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other retail and community development lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of community development investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, community development investment, and community development service needs.

(d) *Small bank and intermediate bank performance ratings.* The OCC rates the performance of a small bank or intermediate bank evaluated under this section as provided in appendix A of this part.

§ 25.15 Wholesale and limited purpose bank performance standards.

(a) *Scope.* The OCC assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) through its community development lending, community development investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a written request with the OCC, at least three months prior to the proposed effective date of the designation. If the OCC approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the OCC notifies the bank that the OCC has revoked the designation on its own initiative.

(c) *Performance criteria.* The OCC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), community development investments, or community development services;

(2) The use of innovative or complex community development investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Benefits to assessment area(s)*—(1) *Benefits inside assessment area(s).* The OCC considers all community development investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefits outside assessment area(s).* The OCC considers the community development investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(e) *Community development performance rating.* The OCC rates a bank's community development performance as provided in appendix A of this part.

§ 25.16 Consideration of performance context.

(a) *General.* Performance context is used to assess how the factors in paragraph (b) of this section affect a bank's capacity and opportunity to meet the performance standards described in §§ 25.13, 25.14, 25.15 or 25.18. Based on that assessment, the OCC may adjust:

(1) The assessment area and bank presumptive ratings in § 25.13; or

(2) The small, intermediate, wholesale, and limited purpose bank ratings, as described in appendix A.

(b) *Performance context factors.* In assessing performance context, the OCC considers and documents the effect of the following factors when determining the assigned rating:

(1) The bank's explanation of how its capacity to meet the performance standards described in §§ 25.13, 25.14, 25.15 or 25.18 was affected by:

(i) The bank's product offerings and business strategy;

(ii) The bank's unique constraints, such as its financial condition, safety and soundness limitations, or other factors;

(iii) The innovativeness, complexity, and flexibility of the bank's qualifying activities;

(iv) The bank's development of business infrastructure and staffing to support the purpose of this part; and

(v) The responsiveness of the bank's qualifying activities to the needs of the community;

(2) The bank's explanation of how its opportunity to engage in qualifying activities was affected by:

(i) The demand for qualifying activities, including, for example, credit needs and market opportunities identified in a Federal Home Loan Bank Targeted Community Lending Plan as provided for in 12 CFR 1290.6(a)(5) or a U.S. Department of Housing & Urban Development Consolidated Plan as provided for in 24 CFR part 91, as applicable;

(ii) The demand for retail loans in low- or moderate-income census tracts; and

(iii) Demographic factors (*e.g.,* housing costs, unemployment rates variation);

(3) The bank's competitive environment, as demonstrated by peer performance.

(4) Any written comments about assessment area needs and opportunities submitted to the bank or the OCC; and

(5) Any other information deemed relevant by the OCC.

(c) *Form.* Banks, other than small and intermediate banks, must submit the information in paragraph (b) of this section on the performance context form available on *www.occ.gov, including for each assessment area.*

§ 25.17 Discriminatory and other illegal credit practices.

(a) *Evidence of discriminatory or other illegal credit practices.* A bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices. In assessing a bank's CRA performance, the OCC's evaluation will consider evidence of discriminatory or other illegal credit practices including but not limited to:

(1) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(2) Violations of the Home Ownership and Equity Protection Act;

(3) Violations of section 5 of the Federal Trade Commission Act;

(4) Violations of section 8 of the Real Estate Settlement Procedures Act;

(5) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission;

(6) Violations of the Military Lending Act; and

(7) Violations of the Servicemembers Civil Relief Act.

(b) *Effect of evidence of discriminatory or other illegal credit practices.* In determining the effect of evidence of practices described in paragraph (a) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank has in place to prevent the practices; any corrective action that the bank has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

§ 25.18 Strategic plan.

(a) *General.* The OCC assesses a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the OCC as provided for in this section;

(2) The OCC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Plan submission*—(1) *Required submission.* A bank must submit a strategic plan that meets the requirements of this section if the bank would otherwise be evaluated under § 25.13 and does not maintain retail domestic deposits on-balance sheet; or

(2) *Optional submission.* A bank not covered under paragraph (b)(1) of this section may submit a strategic plan to the OCC for approval.

(c) *Data reporting.* The OCC's approval of a plan does not affect the bank's data collection, recordkeeping, and reporting obligations, if any, in §§ 25.21, 25.22, 25.25, and 25.26, unless otherwise determined in writing by the OCC. The OCC may require additional bank-specific data collection, recordkeeping, and reporting under a strategic plan, as appropriate.

(d) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the OCC evaluates the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or separate plans for one or more of its assessment areas.

(e) *Public participation in plan development.* Before submitting a plan to the OCC for approval, a bank must:

(1) Solicit public comment on the plan for at least 30 days by submitting the plan for publication on the OCC's website and by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(2) During the public comment period, make copies of the plan available for review by the public and provide copies of the plan upon request for a reasonable fee to cover copying, printing, or mailing, if applicable.

(f) *Submission of plan.* The bank must submit its complete plan to the OCC at least six months prior to the proposed effective date of the plan. The bank must also submit with its plan a description of any written public comments received, including how the plan was revised in light of the comments received. If the OCC determines the plan is not complete, the OCC will notify the bank specifying the information needed, designating a reasonable period of time for the bank to provide the information, and informing the bank that failure to provide the information requested will result in no further consideration being given to the plan.

(g) *Plan content*—(1) *Performance standards*—(i) A plan must specify measurable goals for helping to meet the credit needs of the bank's community and in each of its assessment areas, particularly the needs of low- and moderate-income census tracts and low- and moderate-income individuals and families, through qualifying activities.

(ii) A plan must address the types and volume of qualifying activities the bank will conduct. A plan may focus on one or more types of qualifying activities considering the bank's capacity and constraints, product offerings, and business strategy.

(2) *Assessment area delineation.* A plan must include a delineation of the bank's assessment areas(s) that meets the requirements of § 25.09(a) through (d). In addition, the plan may include assessment area delineations that reflect its target geographic market as defined by the bank in its strategic plan. For a de novo bank, the assessment area delineations should include the projected location of its deposit-taking facilities, retail domestic deposit base, and lending activities.

(3) *Confidential information.* A bank may submit additional information to the OCC on a confidential basis, to the extent permitted by law, but the goals stated in the plan must be sufficiently specific to enable the public and the OCC to judge the merits of the plan.

(4) *Satisfactory and outstanding performance standards.* A plan must specify measurable goals that constitute satisfactory performance. A plan may specify measurable goals that constitute outstanding performance. If a bank submits, and the OCC approves, both satisfactory and outstanding performance goals, the OCC considers the bank eligible for an outstanding performance rating.

(h) *Plan approval*—(1) *Timing.* The OCC will act upon a plan within 90 days after the OCC receives the complete plan and other material required under paragraph (g) of this section. If the OCC does not act within this time period, the plan will be deemed approved unless the OCC extends the review period for good cause for no more than 30 days.

(2) *Public participation.* In evaluating the plan's goals, the OCC considers any written public comment on the plan and any response by the bank to any written public comment on the plan.

(3) *Criteria for evaluating a plan.* The OCC evaluates a plan's goals by considering the extent and breadth of the qualifying activities including:

(i) Community development loans, community development investments, and community development services; and

(ii) The use of innovative, flexible, or complex qualifying activities.

(i) *Plan amendment.* During the term of a plan, a bank may request the OCC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The OCC reserves the right to require a bank that requests an amendment to a plan to comply with the public participation process described in paragraph (e) of this section.

§ 25.19 Assigned ratings.

(a) *General performance standards*—(1) *Bank's assigned rating.* The OCC determines the assigned rating for a bank evaluated under § 25.13 based on its presumptive rating under § 25.13, adjusted for performance context under § 25.16, and consideration of discriminatory or other illegal credit practices under § 25.17.

(2) *Assessment area assigned rating.* The OCC determines the assessment area assigned ratings for a bank evaluated under § 25.13 based on its assessment area presumptive rating under § 25.13, adjusted for performance context under § 25.16 and consideration of discriminatory or other illegal credit practices under § 25.17.

(b) *Strategic plans assigned rating.* A bank operating under a strategic plan will receive, as applicable, an assigned rating, assessment area assigned ratings, and state-level and multistate metropolitan statistical area assigned ratings of satisfactory or outstanding if it has met the measurable goals in the plan that correspond to those ratings after considering performance context under § 25.16 and discriminatory or other illegal credit practices under § 25.17.

§ 25.20 State/multistate metropolitan statistical area assigned rating.

For a bank evaluated under § 25.13 with interstate branches, the OCC will assign a rating for each state where the bank has a facility-based assessment area and each multistate metropolitan statistical area where the bank has a main office, branch, or non-branch deposit-taking facility in two or more states in the multistate metropolitan statistical area. The state or multistate metropolitan statistical area assigned rating for that state or multistate metropolitan statistical area is based on the ratings assigned to its assessment areas within that state or multistate metropolitan statistical area.

Subpart E [Redesignated as Subpart F]

■ 3. Redesignate subpart E as subpart F and redesignate §§ 25.61 through 25.65 as §§ 25.31 through 25.35, respectively.

■ 4. Add new subpart E to read as follows:

Subpart E—Data Collection, Recordkeeping, and Reporting

Sec.

25.21 Data collection for banks evaluated under the general performance standards in § 25.13 or a strategic plan under § 25.18.
25.22 Retail domestic deposit data collection for small banks evaluated under the small bank performance standards in § 25.14.
25.23 Data collection for wholesale and limited purpose banks evaluation under the wholesale and limited purpose performance standards in § 25.15.
25.24 Activity location.
25.25 Recordkeeping.
25.26 Reporting for banks evaluated under the general performance standards in § 25.13, the wholesale and limited purpose bank performance standards in 25.15, or a strategic plan under § 25.18.
25.27 Public disclosures.
25.28 Content and availability of public file.
25.29 Availability of planned evaluation schedule.
25.30 Public notice by banks.

§ 25.21 Data collection for banks evaluated under the general performance standards in § 25.13 or a strategic plan under § 25.18.

(a) *General.* A bank evaluated under the general performance standards in § 25.13 and a bank evaluated under a strategic plan under § 25.18, unless otherwise determined in writing by the OCC, must collect and maintain the information required by this section until the completion of the relevant CRA evaluation.

(b) *Performance standards data.* A bank must collect and maintain, along with supporting documentation, its:

(1) Retail lending distribution test ratios calculated under § 25.12 for the borrower distribution and geographic distribution tests for each major retail lending product line evaluated in the assessment area;

(2) CRA evaluation measure and each assessment-area CRA evaluation measure calculated under § 25.11;

(3) Community development minimum and each assessment-area level community development minimum calculated under § 25.13; and

(4) Presumptive ratings under § 25.13.

(c) *Qualifying activities and retail domestic deposit data required to be collected and maintained.* A bank subject to this section must collect and maintain the following data and supporting documentation for all qualifying activities and certain non-qualifying activities conducted by the bank:

(1) *Qualifying loan data.* Except as provided in paragraph (c)(8) of this section, for each qualifying loan:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) An indicator of whether the loan is a retail loan or a community development loan;

(iii) Date of:

(A) Origination for loans originated by the bank, if applicable;

(B) Purchase for loans not originated by the bank, if applicable; and

(C) Sale if the loan is a retail loan and sold by the bank within 365 days of origination;

(iv) An indicator of whether the loan was originated or purchased by the bank;

(v) The loan amount at origination or purchase;

(vi) The outstanding dollar amount of the loan, as of the close of business on the last day of the month, for each month that the loan is on-balance sheet;

(vii) The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract;

(viii) Portion of the community development loan that is partially qualifying, if applicable;

(ix) An indicator of whether a multiplier applies;

(x) The income or gross annual revenue of the borrower; and

(xi) The criteria in § 25.04 that the loan satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(2) *Other loan data.* A bank must collect and maintain the following data and supporting documentation for originations of non-qualifying home mortgage loans, small loans to businesses, small loans to farms, and consumer loans by the bank:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) The date of origination;

(iii) The loan amount at origination;

(iv) The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract; and

(v) The income or gross annual revenue of the borrower.

(3) *Number of home mortgage.* For the home mortgage product line, for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to low- and moderate-income borrowers.

(4) *Number of small loans to businesses.* For the small loan to a business product line, for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to CRA-eligible businesses.

(5) *Number of small loans to farms.* For the small loan to a farm product line for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to CRA-eligible farms.

(6) *Number of consumer loans.* For each other consumer loan product line as defined in § 25.03, for each county or county equivalent:

(i) The number of loans originated; and

(ii) The number of loans originated to low- and moderate-income borrowers.

(7) *Community development investment data.* Except as provided in paragraph (c)(8) of this section, for each community development investment:

(i) A unique number, alpha-numeric symbol, or another mechanism to identify the community development investment;

(ii) Date of community development investment by the bank;

(ii) The outstanding dollar value of the community development investment, as of the close of business on the last day of the month, for each month that the investment is on-balance sheet, if applicable;

(iii) The quantified dollar value of the monetary donation, if applicable;

(iv) The quantified dollar value of the in-kind donation, if applicable;

(v) The community development investment location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;

(vi) Portion of the community development investment that is partially qualifying, if applicable;

(vii) An indicator of whether a multiplier applies; and

(viii) The criteria in § 25.04 that the community development investment satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(8) *Community development services data.* For each community development service:

(i) A unique number or alpha-numeric symbol identifying the community development service;

(ii) The quantified dollar value of the community development service;

(iii) A description of the community development service;

(iv) The date the community development service was performed;

(v) The community development service location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;

(vi) Portion of the community development service that is partially qualifying, if applicable;

(vii) An indicator of whether a multiplier applies; and

(viii) The qualifying activity criteria in § 25.04 that the community development service satisfies or that it is on the illustrative list referenced in § 25.05.

(9) *Grandfathered qualifying activities.* For each activity that qualifies under § 25.04(a)(1)(3):

(i) A unique number or alpha-numeric symbol identifying activity;

(ii) The outstanding dollar value of the activity, as of the close of business on the last day of the month, for each month that the activity is on-balance sheet,

(iii) A description of the activity, including whether it is a retail loan, community development loan, or community development investment;

(iv) The activity location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;

(v) Portion of the activity that is partially qualifying, if applicable;

(vi) An indicator of whether a multiplier applies; and

(vii) A statement certifying that the activity would have received positive consideration in a CRA performance evaluation on the date prior to October 1, 2020.

(10) *Retail domestic deposit data.* The value of each retail domestic deposit account and the physical address and associated Federal Information Processing Standards code for the metropolitan statistical area, state, and county or county equivalent of each depositor as of the close of business on the last day of each quarter during the examination period.

(d) *Assessment areas.* A bank must collect and maintain a list of its assessment area(s) showing within the assessment area(s) each:

(1) County or county equivalent;

(2) Metropolitan division;

(3) Nonmetropolitan area;

(4) Metropolitan statistical area; or

(5) State.

(e) *Deposit-taking facilities.* For each deposit-taking facility, a bank must collect and maintain

(1) An indicator of whether it was a branch or a non-branch deposit-taking facility; and

(2) The physical address and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract.

§ 25.22 Retail domestic deposit data collection for small and intermediate banks evaluated under the small and intermediate bank performance standards in § 25.14.

A small or intermediate bank evaluated under the small and intermediate bank performance standards in § 25.14 must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination period until the completion of its next CRA evaluation.

§ 25.23 Data collection for wholesale and limited purpose banks evaluated under the wholesale and limited purpose bank performance standards in § 25.15.

(a) *General.* A wholesale or limited purpose bank evaluated under the wholesale and limited purpose bank performance standards in § 25.15 must collect and maintain the information required by this section until the completion of the relevant CRA evaluation.

(b) *Qualifying community development loan, community development investment, and community development service required to be collected and maintained.* A bank subject to this section must collect and maintain the following data and supporting documentation for all qualifying community development loans, community development investments, and community development services conducted by the bank:

(1) *Qualifying community development loan data.* Except as provided in paragraph (b)(4) of this section for each qualifying loan:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) Date of:

(A) Origination for loans originated by the bank, if applicable; and

(B) Purchase for loans not originated by the bank, if applicable;

(iii) An indicator of whether the loan was originated or purchased by the bank;

(iv) The loan amount at origination or purchase;

(v) The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract; and

(vi) The criteria in § 25.04 that the loan satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(2) *Community development investment data.* Except as provided in paragraph (b)(4) of this section, for each community development investment:

(i) A unique number, alpha-numeric symbol, or another mechanism to identify the community development investment;

(ii) Date of community development investment by the bank;

(iii) The value of the community development investment;

(iv) The community development investment location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable; and

(v) The criteria in § 25.04 that the community development investment satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(3) *Community development services data.* For each community development service:

(i) A unique number or alpha-numeric symbol identifying the community development service;

(ii) A description of the community development service;

(iii) The date the community development service was performed;

(iv) The community development service location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable; and

(v) The qualifying activity criteria in § 25.04 that the community development service satisfies or that it is on the illustrative list referenced in § 25.05.

(4) *Grandfathered qualifying activities.* For each activity that qualifies under § 25.04(d):

(i) A unique number or alpha-numeric symbol identifying the activity;

(ii) The origination value of the community development loan or the community development investment;

(iii) A description of the activity, including whether it is a community development loan or community development investment;

(iv) The activity location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable; and

(v) A statement certifying that the activity that would have received positive consideration in a CRA performance evaluation on the date prior to October 1, 2020.

(c) *Retail domestic deposit data.* The value of each retail domestic deposit account and the physical address and associated Federal Information Processing Standards code for the metropolitan statistical area, state, and county or county equivalent of each depositor as of the close of business on the last day of each quarter during the examination period.

(d) *Assessment areas.* A bank must collect and maintain a list of its assessment area(s) showing within the assessment area(s) each:

(1) County or county equivalent;

(2) Metropolitan division;

(3) Nonmetropolitan area;

(4) Metropolitan statistical area; or

(5) State.

(e) *Deposit-taking facilities.* For each deposit-taking facility, a bank must collect and maintain

(1) An indicator of whether it was a branch or a non-branch deposit-taking facility; and

(2) The physical address and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract.

§ 25.24 Activity location.

(a) For the purpose of this part:

(1) A consumer loan is located at the borrower's physical address on file with the bank at the time of origination;

(2) A home mortgage loan is located at the address of the property to which the loan relates; and

(3) A business or farm loan is located at the physical address of the main business facility or farm or the physical address where the loan proceeds will be applied, as indicated by the borrower; and

(b) For the purpose of this part, the location of a community development loan, a community development investment, or a community development service is:

(1) The address of a particular project to the extent a bank can document that the services or funding it provided was allocated to that particular project; or

(2) Determined by allocating the activity across all of a bank's assessment areas and other metropolitan statistical areas or non-metropolitan statistical areas served by the activity according to the share of the bank's deposits in those areas, treating the bank's deposits in the region served by the activity as if they were all of the bank's deposits, to the extent the bank cannot document that the services or funding it provided was allocated to a particular project.

§ 25.25 Recordkeeping.

Banks must keep the data collected under § 25.21, § 25.22, and § 25.23 in machine readable form (as prescribed by the OCC) until the completion of their next CRA evaluation.

§ 25.26 Reporting for banks evaluated under the general performance standards in § 25.13, the wholesale and limited purpose bank performance standards in § 25.15, or a strategic plan under § 25.18.

(a) *General.* Banks evaluated under the general performance standards in § 25.13, the wholesale and limited purpose bank performance standards in § 25.15, or a strategic plan under § 25.18, unless otherwise determined in writing by the OCC, must report the information required by this section.

(b) *Performance standards, qualifying activities, and retail domestic deposits data reporting*—(1) *Banks evaluated under the general performance standards or a strategic plan*—(i) A bank evaluated under the general performance standards or under a strategic plan must report to the OCC:

(A) On an annual basis, the information required by § 25.21(b)(2), as applicable; and

(B) At the end of the evaluation period, the information required by § 25.21(b)(1) and (b)(4), as applicable.

(ii) On an annual basis, a bank subject to this section must report to the OCC the following data for all qualifying activities conducted during the annual period:

(A) The quantified dollar value of qualifying retail loans;

(B) The quantified dollar value of community development loans;

(C) The quantified dollar value of community development investments; and

(D) The quantified dollar value of community development services.

(iii) A bank subject to this section must annually report to the OCC the information required by § 25.21(c)(3)–(6) for loans originated during the annual period.

(iv) A bank subject to this section must annually report its average quarterly retail domestic deposits as of the close of business on the last day of each quarter.

(2) *Banks evaluated under the wholesale and limited purpose bank performance standards.* On an annual basis, a bank evaluated under the wholesale and limited purpose bank performance standards must report following data for all qualifying activities conducted during the annual period:

(i) The value of community development loans; and

(ii) The value of community development investments.

(c) *Assessment area data.* For each assessment area, a bank subject to this section must annually report to the OCC the information required by § 25.21(e).

(d) *Performance context information.* A bank subject to this section must report performance context information on the form required by § 25.16(c) before the beginning of its CRA performance evaluation.

(e) *Form.* A bank subject to this section must use the CRA data reporting form available at *www.occ.gov* to meet the reporting requirements in this section.

§ 25.27 Public disclosures.

(a) *Individual CRA Disclosure Statement.* The OCC prepares annually a CRA Disclosure Statement for each bank evaluated under § 25.13 that contains the bank's:

(1) Quantified dollar value of qualifying retail loans;

(2) Quantified dollar value of community development loans;

(3) Quantified dollar value of community development investments; and

(4) Quantified dollar value of community development services.

(b) *Aggregate CRA Disclosure Statement.* The OCC prepares annually, for each county, an aggregate CRA Disclosure Statement of home mortgage, consumer, small loans to businesses, and small loans to farms lending by all banks subject to reporting under this part. This disclosure statement includes the following information, at the county level, from all banks evaluated under § 25.13, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or bank:

(1) The number of home mortgage loan originations;

(2) The number of home mortgage loan originations to low- or moderate-income individuals and families;

(3) The number of originations for each consumer loan product line;

(4) The number of originations to low- or moderate- income individuals and families for each consumer loan product line;

(5) The number of small loans to businesses;

(6) The number of small loans to businesses in low- and moderate-income census tracts;

(7) The number of small loans to businesses provided to CRA-eligible businesses;

(8) The number of small loans to farms;

(9) The number of small loans to farms in low- and moderate-income census tracts; and

(10) The number of small loans to farms provided to CRA-eligible farms;

(c) *Availability of CRA disclosure statements.* The OCC will annually make publicly available the aggregate and individual CRA Disclosure Statements, described in paragraphs (a) and (b) of this section.

(d) *Availability of ratings.* The OCC will make available the ratings of all OCC-regulated banks and a list of all banks that achieve an assigned rating of outstanding. A bank that achieves an outstanding assigned rating will receive a certificate or seal of achievement that may be displayed on its website and in its main office, branches, and non-branch deposit-taking facilities.

§ 25.28 Content and availability of public file.

(a) *Information available to the public.* A bank must maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to assessment area needs and opportunities, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the OCC. The bank must place this copy in the public file within 30 business days after its receipt from the OCC;

(3) A list of the bank's branches, their street addresses, and census tracts;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and census tracts;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the counties or county equivalents contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan must include in its public file a copy of that plan. A bank need not include information submitted to the OCC on a confidential basis in conjunction with the plan.

(2) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank must update the description quarterly.

(c) *Availability of public information.* A bank must make available to the public the information required in this section.

(d) *Updating.* Except as otherwise provided in this section, a bank must ensure that the information required by this section is current as of April 1 of each year.

§ 25.29 Availability of planned evaluation schedule.

The OCC will make available at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA evaluations in that quarter.

§ 25.30 Public notice by banks.

A bank must make available to the public the notice set forth in Appendix B of this part. Parenthetical text must be adjusted by each bank as appropriate.

Bracketed text must be included if applicable.

■ 5. Revise paragraph (a) of newly designated § 25.32 to read as follows:

§ 25.32 Definitions.

* * * * *

(a) *Bank* means, unless the context indicates otherwise, a national bank and a foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(i).

* * * * *

§ 25.33 [Amended]

■ 6. In newly designated § 25.33 amend paragraph (b)(2) by removing ''§ 25.64'' and adding ''§ 25.34'' in its place.

■ 7. Revise Appendix A to part 25 to read as follows:

Appendix A to Part 25—Small Bank, Intermediate Bank, Wholesale Bank, and Limited Purpose Bank Ratings

(a) *Ratings in general*—(1) In assigning a rating, the OCC evaluates a small bank's, intermediate bank's, wholesale bank's, or limited purpose bank's performance under the applicable performance criteria in § 25.14 and § 25.15, adjusting for performance context in § 25.16 and consideration of any evidence of discriminatory and illegal credit practices as described in § 25.17. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority depository institutions, women's depository institutions, and low-income credit unions.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the small bank and intermediate bank performance standards*—(1) *Lending test ratings*—(i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's or intermediate bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other retail and community development lending-related activities such as loan originations for sale to the secondary markets and community development loans and community development investments;

(B) A majority of its loans and, as appropriate, other retail and community development lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other retail and community development lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank or intermediate bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank or intermediate bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate banks*—(i) *Eligibility for a satisfactory community development test rating.* The OCC rates an intermediate bank's community development performance ''satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, community development investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OCC rates an intermediate bank's community development performance ''outstanding'' if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, community development investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate bank may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Bank rating*—(i) *Eligibility for a satisfactory rating.* No intermediate bank may receive an assigned rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding rating*—(A) An intermediate bank that receives an ''outstanding'' rating on one test and at least a ''satisfactory'' on the other test may receive rating of ''outstanding.''

(B) A small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an assigned rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the OCC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making community development investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank or intermediate bank may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' assigned rating depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(c) *Banks evaluated under the wholesale and limited purpose bank performance standards.* The OCC assigns each wholesale or limited purpose bank's performance one of the four following ratings.

(1) *Outstanding.* The OCC rates a wholesale or limited purpose bank's performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or community development investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex community development loans, community development investments, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The OCC rates a wholesale or limited purpose bank's performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or community development investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex community development loans, community development investments, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The OCC rates a wholesale or limited purpose bank's performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or community development investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex community development loans, community development investments, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The OCC rates a wholesale or limited purpose bank's performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or community development investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified community development loans, community development investments, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

■ 8. Revise Appendix B to read as follows:

Appendix B to Part 25—Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency (OCC) evaluates our record of helping to meet the credit needs of this community, consistent with safe and sound operations. The OCC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the OCC; and comments received from the public relating to assessment area needs and opportunities, as well as our responses to those comments. You may review this information today by reviewing the public file which is available at (web address and/or physical address at which the public file can be reviewed and copied).

You may also have access to the following additional information, which we will make available to you after you make a request to us: (1) A map showing the assessment area containing a select branch, which is the area in which the OCC evaluates our CRA performance for that particular community; (2) branch addresses and associated branch facilities and hours in any assessment area; (3) a list of services we provide at those locations; (4) our most recent rating in the assessment area; and (5) copies of all written comments received by us that specifically relate to the needs and opportunities of a given assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

At least 30 days before the beginning of each quarter, the OCC publishes a nationwide list of the (entity type) that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments regarding the needs and opportunities of any of the (entity type)'s assessment area(s) to (name, address, and email address of official at bank) and Deputy Comptroller (address and email address). Your comments, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. (We are an affiliate of (name of holding company), a (entity type) holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by (entity type) holding companies.)

■ Effective October 1, 2020 to January 1, 2024, add Appendix C to part 25 to read as follows:

Appendix C to Part 25—Community Reinvestment Act Regulations (Alternative Compliance)

Note: The content of this appendix reproduces parts 25 and 195 implementing the Community Reinvestment Act as of the date prior to October 1, 2020.

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

Subpart A—General

§ 25.11 Authority, purposes, and scope.

(a) Authority and OMB control number—(1) Authority. The authority for subparts A, B, C, D, and E is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

(2) OMB control number. The information collection requirements contained in this part were approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 1557–0160.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Providing that the OCC takes that record into account in considering certain applications.

(c) *Scope*—(1) General. This part applies to all banks except as provided in paragraphs (c)(2) and (c)(3) of this section.

(2) Federal branches and agencies. (i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) Certain special purpose banks. This part does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

§ 25.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 25.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking

facility owned or operated by, or operated exclusively for, the bank at which deposits are received, cash dispersed, or money lent.

(e) *Bank* means a national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits, except as provided in § 25.11(c).

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and OCC, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank:

(i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's retail banking services under § 25.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) Motor vehicle loan, which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) Credit card loan, which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 1026.2 of this title;

(3) Other secured consumer loan, which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) Other unsecured consumer loan, which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title, and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) Low-income, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) Moderate-income, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) Middle-income, which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) Upper-income, which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more, in the case of a geography.

(n) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 25.25(b).

(o) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small bank*—(1) Definition. *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion. Intermediate small bank means a small bank with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(x) *Wholesale bank* means a bank that is not in the business of extending home

mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect, in accordance with § 25.25(b).

Subpart B—Standards for Assessing Performance

§ 25.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The OCC assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests.* The OCC applies the lending, investment, and service tests, as provided in §§ 25.22 through 25.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* The OCC applies the community development test for a wholesale or limited purpose bank, as provided in § 25.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The OCC applies the small bank performance standards as provided in § 25.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under § 25.42.

(4) *Strategic plan.* The OCC evaluates the performance of a bank under a strategic plan if the bank submits, and the OCC approves, a strategic plan as provided in § 25.27.

(b) *Performance context.* The OCC applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s);

(5) The bank's past performance and the performance of similarly situated lenders;

(6) The bank's public file, as described in § 25.43, and any written comments about the bank's CRA performance submitted to the bank or the OCC; and

(7) Any other information deemed relevant by the OCC.

(c) *Assigned ratings.* The OCC assigns to a bank one of the following four ratings pursuant to § 25.28 and appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the OCC reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the OCC considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the bank for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the OCC considers as a factor capital investment, loan participation, and other ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

§ 25.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the OCC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's option, the OCC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 25.42(c)(1), the data for each category that the bank elects to have the OCC evaluate.

(2) The OCC considers originations and purchases of loans. The OCC will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the OCC to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The OCC will not consider these loans under any criterion of the

lending test except the community development lending criterion.

(b) *Performance criteria.* The OCC evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's lending in the bank's assessment area(s);

(ii) The dispersion of lending in the bank's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the OCC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 25.42.

(2) The OCC considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the OCC consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the OCC consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The OCC does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 25.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The OCC rates a bank's lending performance as provided in appendix A of this part.

§ 25.23 Investment test.

(a) *Scope of test.* The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a bank's option, the OCC will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The OCC evaluates the investment performance of a bank pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The OCC rates a bank's investment performance as provided in appendix A of this part.

§ 25.24 Service test.

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(c) *Affiliate service.* At a bank's option, the OCC will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The OCC evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The OCC evaluates community development services pursuant to the following criteria:

(1) The extent to which the bank provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The OCC rates a bank's service performance as provided in appendix A of this part.

§ 25.25 Community development test for wholesale or limited purpose banks.

(a) *Scope of test.* The OCC assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a request, in writing, with the OCC, at least three months prior to the proposed effective date of the designation. If the OCC approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the OCC notifies the bank that the OCC has revoked the designation on its own initiative.

(c) *Performance criteria.* The OCC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's option, the OCC will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 25.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) Benefit inside assessment area(s). The OCC considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefit outside assessment area(s).* The OCC considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The OCC rates a bank's community development performance as provided in appendix A of this part.

§ 25.26 Small bank performance standards.

(a) *Performance criteria*—(1) Small banks that are not intermediate small banks. The OCC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The OCC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small bank performance rating.* The OCC rates the performance of a bank evaluated under this section as provided in appendix A of this part.

§ 25.27 Strategic plan.

(a) *Alternative election.* The OCC will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the OCC as provided for in this section;

(2) The OCC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Data reporting.* The OCC's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 25.42.

(c) *Plans in general*—(1) Term. A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the OCC will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the OCC for approval, a bank shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment

on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank shall submit its plan to the OCC at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) Measurable goals. (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank shall address in its plan all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank may submit additional information to the OCC on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the OCC to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a bank submits, and the OCC approves, both ''satisfactory'' and ''outstanding'' performance goals, the OCC will consider the bank eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the OCC will evaluate the bank's performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval*—(1) Timing. The OCC will act upon a plan within 60 calendar days after the OCC receives the complete plan and other material required under paragraph (e) of this section. If the OCC fails to act within this time period, the plan shall be deemed approved unless the OCC extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the OCC considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The OCC evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments; and

(iii) The availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the OCC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The OCC approves the goals and assesses performance under a plan as provided for in appendix A of this part.

§ 25.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the OCC assigns to a bank a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the bank's performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The OCC assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A bank that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No bank may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The OCC's evaluation of a bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank's lending performance. In connection with any type of lending activity described in § 25.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

§ 25.29 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the OCC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

(1) The establishment of a domestic branch;

(2) The relocation of the main office or a branch;

(3) Under the Bank Merger Act (12 U.S.C. 1828(c)), the merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution; and

(4) The conversion of an insured depository institution to a national bank charter.

(b) *Charter application.* An applicant (other than an insured depository institution) for a national bank charter shall submit with its application a description of how it will meet its CRA objectives. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the meaning given to that term in 12 U.S.C. 1813.

Subpart C—Records, Reporting, and Disclosure Requirements

§ 25.41 Assessment area delineation.

(a) *In general.* A bank shall delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The OCC does not evaluate the bank's delineation of its assessment area(s) as a separate performance criterion, but the OCC reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area.* Each bank's assessment area(s):

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) Banks serving military personnel. Notwithstanding the requirements of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(g) *Use of assessment area(s).* The OCC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the OCC determines that the assessment area(s) do not comply with the requirements of this section.

§ 25.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A bank, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the OCC) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall report annually by March 1 to the OCC in machine readable form (as prescribed by the OCC) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of $100,000 or less;

(ii) With amount at origination of more than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of more than $250,000; and

(iv) To businesses and farms with gross annual revenues of $1 million or less (using the revenues that the bank considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the bank is subject to reporting under part 1003 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or

outside any MSA) in accordance with the requirements of part 1003 of this title.

(c) *Optional data collection and maintenance*—(1) Consumer loans. A bank may collect and maintain in machine readable form (as prescribed by the OCC) data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: Motor vehicle, credit card, other secured, and other unsecured. If the bank maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank considered in making its credit decision.

(2) *Other loan data.* At its option, a bank may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A bank that elects to have the OCC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank that elects to have the OCC consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank.

(f) *Small banks electing evaluation under the lending, investment, and service tests.* A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall collect and report to the OCC by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The OCC prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The OCC, in conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 195, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The OCC makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The OCC publishes a list of the depositories at which the statements are available.

§ 25.43 Content and availability of public file.

(a) *Information available to the public.* A bank shall maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's

performance in helping to meet community credit needs, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the OCC. The bank shall place this copy in the public file within 30 business days after its receipt from the OCC;

(3) A list of the bank's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) Banks other than small banks. A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall include in its public file the following information pertaining to the bank and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's assessment area(s) and outside the bank's assessment area(s); and

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the OCC.

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website at *www.consumerfinance.gov/hmda.* In addition, a bank that elected to have the OCC consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The bank shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year shall include in its public file:

(i) The bank's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other banks by paragraph (b)(1) of this section, if the bank has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the OCC on a confidential basis in conjunction with the plan.

(5) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank shall update the description quarterly.

(c) *Location of public information.* A bank shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The bank may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank shall ensure that the information required by this section is current as of April 1 of each year.

§ 25.44 Public notice by banks.

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. A bank shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks.

§ 25.45 Publication of planned examination schedule.

The OCC publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

Subpart D [Reserved]

Subpart E—Prohibition Against Use of Interstate Branches Primarily for Deposit Production

§ 25.61 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope.* (1) This subpart applies to any national bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch that is a Federal branch for a period of at least one year.

(2) This subpart describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in

interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

§ 25.62 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise:

(1) A national bank; and

(2) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(j).

(b) *Covered interstate branch* means:

(1) Any branch of a national bank, and any Federal branch of a foreign bank, that:

(i) Is established or acquired outside the bank's home State pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in paragraph (b)(1)(i) of this section; and

(2) Any bank or branch of a bank controlled by an out-of-State bank holding company.

(c) Federal branch means Federal branch as that term is defined in 12 U.S.C. 3101(6) and 12 CFR 28.11(i).

(d) *Home State* means:

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

(3) With respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 28.11(o); and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(e) *Host State* means a State in which a covered interstate branch is established or acquired.

(f) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of ''bank'' in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(g) *Out-of-State bank holding company* means, with respect to any State, a bank holding company whose home State is another State.

(h) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(i) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the OCC.

§ 25.63 Loan-to-deposit ratio screen.

(a) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the OCC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host State loan-to-deposit ratio.

(b) *Results of screen.* (1) If the OCC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this subpart is required.

(2) If the OCC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the OCC will make a credit needs determination for the bank as provided in § 25.64.

§ 25.64 Credit needs determination.

(a) *In general.* The OCC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The OCC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(2) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The CRA ratings received by the bank, if any;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The OCC's CRA regulations (subparts A through D of this part) and interpretations of those regulations.

§ 25.65 Sanctions.

(a) *In general.* If the OCC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the OCC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the OCC's authority to order the bank to close a covered interstate branch, the OCC will issue to the bank a notice of the OCC's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing.* The OCC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 19.

Appendix A to Part 25—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the OCC evaluates a bank's

performance under the applicable performance criteria in this part, in accordance with §§ 25.21 and 25.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) Banks evaluated under the lending, investment, and service tests—(1) Lending performance rating. The OCC assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The OCC rates a bank's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The OCC rates a bank's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The OCC rates a bank's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) Substantial noncompliance. The OCC rates a bank's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The OCC assigns each bank's investment performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The OCC rates a bank's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The OCC rates a bank's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The OCC rates a bank's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The OCC rates a bank's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The OCC assigns each bank's service performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's service performance ''outstanding'' if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The OCC rates a bank's service performance ''high satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The OCC rates a bank's service performance ''low satisfactory'' if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The OCC rates a bank's service performance ''needs to improve'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The OCC rates a bank's service performance as being in ''substantial noncompliance'' if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose banks.* The OCC assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

(1) *Outstanding.* The OCC rates a wholesale or limited purpose bank's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The OCC rates a wholesale or limited purpose bank's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The OCC rates a wholesale or limited purpose bank's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The OCC rates a wholesale or limited purpose bank's community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Banks evaluated under the small bank performance standards*—(1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's lending performance ''satisfactory'' if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of

different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small bank that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small banks*—(i) Eligibility for a satisfactory community development test rating. The OCC rates an intermediate small bank's community development performance ''satisfactory'' if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OCC rates an intermediate small bank's community development performance ''outstanding'' if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small bank that is not an intermediate small bank that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a bank's performance is ''outstanding,'' the OCC considers the extent to which the bank exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The OCC approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the bank's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the OCC will approve those goals as ''outstanding.''

(3) *Rating.* The OCC assesses the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

(i) If the bank substantially achieves its plan goals for a satisfactory rating, the OCC will rate the bank's performance under the plan as ''satisfactory.''

(ii) If the bank exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the OCC will rate the bank's performance under the plan as ''outstanding.''

(iii) If the bank fails to meet substantially its plan goals for a satisfactory rating, the OCC will rate the bank as either ''needs to improve'' or ''substantial noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in § 25.27(f)(4).

Appendix B to Part 25—CRA Notice

(a) *Notice for main offices and, if an interstate bank, one branch office in each state.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the Comptroller; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the Comptroller publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the Comptroller, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the Comptroller evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the Comptroller publishes a

nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by bank holding companies

PART 195—COMMUNITY REINVESTMENT

Subpart A—General

§ 195.11 Authority, purposes, and scope.

(a) *Authority.* This part is issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); section 5, as amended, and sections 3, and 4, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, and 1464); and sections 4, 6, and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1828(c)).

(b) *Purposes.* In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the appropriate Federal banking agency assesses a savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the savings association; and

(2) Providing that the appropriate Federal banking agency takes that record into account in considering certain applications.

(c) *Scope*—(1) General. This part applies to all savings associations except as provided in paragraph (c)(2) of this section.

(2) *Certain special purpose savings associations.* This part does not apply to special purpose savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These associations include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and associations that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent associations, trust companies, or clearing agents.

§ 195.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term ''control'' has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 195.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the savings association at which deposits are received, cash dispersed, or money lent.

(e) [Reserved]

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of $1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved, nonmetropolitan middle-income geographies designated by the appropriate Federal banking agency based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose savings association:

(i) Has not been reported or collected by the savings association or an affiliate for consideration in the savings association's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the savings association's retail banking services under § 195.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) Motor vehicle loan, which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) Credit card loan, which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a ''credit card,'' as this term is defined in § 1026.2 of this title;

(3) Other secured consumer loan, which is a secured consumer loan that

is not included in one of the other categories of consumer loans; and

(4) Other unsecured consumer loan, which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) Low-income, which means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in the case of a geography.

(2) Moderate-income, which means an individual income that is at least 50 percent and less than 80 percent of the area median income or a median family income that is at least 50 and less than 80 percent in the case of a geography.

(3) Middle-income, which means an individual income that is at least 80 percent and less than 120 percent of the area median income or a median family income that is at least 80 and less than 120 percent in the case of a geography.

(4) Upper-income, which means an individual income that is 120 percent or more of the area median income or a median family income that is 120 percent or more in the case of a geography.

(n) *Limited purpose savings association* means a savings association that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose savings association is in effect, in accordance with § 195.25(b).

(o) *Loan location.* A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small savings association*—(1) Definition. Small savings association means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.305 billion. Intermediate small savings association means a small savings association with assets of at least $326 million as of December 31 of both of the prior two calendar years and less than $1.305 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment.* The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in ''loans to small businesses'' as defined in the instructions for preparation of the Thrift Financial Report (TFR) or Consolidated Reports of Condition and Income (Call Report), as appropriate.

(w) *Small farm loan* means a loan included in ''loans to small farms'' as defined in the instructions for preparation of the TFR or Call Report, as appropriate.

(x) *Wholesale savings association* means a savings association that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale savings association is in effect, in accordance with § 195.25(b).

Subpart B—Standards for Assessing Performance

§ 195.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards.* The appropriate Federal banking agency assesses the CRA performance of a savings association in an examination as follows:

(1) *Lending, investment, and service tests.* The appropriate Federal banking agency applies the lending, investment, and service tests, as provided in §§ 195.22 through 195.24, in evaluating the performance of a savings association, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose savings associations.* The appropriate Federal banking agency applies the community development test for a wholesale or limited purpose savings association, as provided in § 195.25, except as provided in paragraph (a)(4) of this section.

(3) *Small savings association performance standards.* The appropriate Federal banking agency applies the small savings association performance standards as provided in § 195.26 in evaluating the performance of a small savings association or a savings association that was a small savings association during the prior calendar year, unless the savings association elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The savings association may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other savings associations under § 195.42.

(4) *Strategic plan.* The appropriate Federal banking agency evaluates the performance of a savings association under a strategic plan if the savings association submits, and the appropriate Federal banking agency approves, a strategic plan as provided in § 195.27.

(b) *Performance context.* The appropriate Federal banking agency applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a savings association's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the savings association's assessment area(s) maintained by the savings association or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The savings association's product offerings and business strategy as determined from data provided by the savings association;

(4) Institutional capacity and constraints, including the size and financial condition of the savings association, the economic climate (national, regional, and local), safety

and soundness limitations, and any other factors that significantly affect the savings association's ability to provide lending, investments, or services in its assessment area(s);

(5) The savings association's past performance and the performance of similarly situated lenders;

(6) The savings association's public file, as described in § 195.43, and any written comments about the savings association's CRA performance submitted to the savings association or the appropriate Federal banking agency; and

(7) Any other information deemed relevant by the appropriate Federal banking agency.

(c) *Assigned ratings.* The appropriate Federal banking agency assigns to a savings association one of the following four ratings pursuant to § 195.28 and appendix A of this part: ''outstanding''; ''satisfactory''; ''needs to improve''; or ''substantial noncompliance,'' as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the appropriate Federal banking agency reflects the savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the savings association.

(d) *Safe and sound operations.* This part and the CRA do not require a savings association to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the appropriate Federal banking agency anticipates savings associations can meet the standards of this part with safe and sound loans, investments, and services on which the savings associations expect to make a profit. Savings associations are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a savings association under this part, the appropriate Federal banking agency considers, as a factor, low-cost education loans originated by the savings association to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, ''low-cost education loans'' means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the savings association for a student at an ''institution of higher education,'' as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned savings association under this part, the appropriate Federal banking agency considers as a factor capital investment, loan participation, and other ventures undertaken by the savings association in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the savings association's assessment area(s) or the broader statewide or regional area that includes the savings association's assessment area(s).

§ 195.22 Lending test.

(a) *Scope of test.* (1) The lending test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a savings association's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a savings association's business, the appropriate Federal banking agency will evaluate the savings association's consumer lending in one or more of the following categories: Motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a savings association's option, the appropriate Federal banking agency will evaluate one or more categories of consumer lending, if the savings association has collected and maintained, as required in § 195.42(c)(1), the data for each category that the savings association elects to have the appropriate Federal banking agency evaluate.

(2) The appropriate Federal banking agency considers originations and purchases of loans. The appropriate Federal banking agency will also consider any other loan data the savings association may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A savings association may ask the appropriate Federal banking agency to consider loans originated or purchased by consortia in which the savings association participates or by third parties in which the savings association has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The appropriate Federal banking agency will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The appropriate Federal banking agency evaluates a savings association's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, in the savings association's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the savings association's lending in the savings association's assessment area(s);

(ii) The dispersion of lending in the savings association's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the savings association's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the savings association's assessment area(s), of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The savings association's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The savings association's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a savings association's option, the appropriate Federal banking agency will consider loans by an affiliate of the savings association, if the savings association provides data on the affiliate's loans pursuant to § 195.42.

(2) The appropriate Federal banking agency considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a savings association elects to have the appropriate Federal banking agency consider loans within a particular lending category made by one or more of the savings association's affiliates in a particular assessment area, the savings association shall elect to have the appropriate Federal banking agency consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the savings association's affiliates.

(3) The appropriate Federal banking agency does not consider affiliate lending in assessing a savings association's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the savings association participates or by a third party in which the savings association has invested:

(1) Will be considered, at the savings association's option, if the savings association reports the data pertaining to these loans under § 195.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The appropriate Federal banking agency rates a savings association's lending performance as provided in appendix A of this part.

§ 195.23 Investment test.

(a) *Scope of test.* The investment test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a savings association's option, the appropriate Federal banking agency will consider, in its assessment of a savings association's investment performance, a qualified investment made by an affiliate of the savings association, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the savings association that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The appropriate Federal banking agency evaluates the investment performance of a savings association pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The appropriate Federal banking agency rates a savings association's investment performance as provided in appendix A of this part.

§ 195.24 Service test.

(a) *Scope of test.* The service test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a savings association's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(c) *Affiliate service.* At a savings association's option, the appropriate Federal banking agency will consider, in its assessment of a savings association's service performance, a community development service provided by an affiliate of the savings association, if the community development service is not claimed by any other institution.

(d) *Performance criteria*—retail banking services. The appropriate Federal banking agency evaluates the availability and effectiveness of a savings association's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the savings association's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the savings association's branches, the savings association's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The appropriate Federal banking agency evaluates community development services pursuant to the following criteria:

(1) The extent to which the savings association provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The appropriate Federal banking agency rates a savings association's service performance as provided in appendix A of this part.

§ 195.25 Community development test for wholesale or limited purpose savings associations.

(a) *Scope of test.* The appropriate Federal banking agency assesses a wholesale or limited purpose savings association's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose savings association.* In order to receive a designation as a wholesale or limited purpose savings association, a savings association shall file a request, in writing, with the appropriate Federal banking agency, at least three months prior to the proposed effective date of the designation. If the appropriate Federal banking agency approves the designation, it remains in effect until the savings association requests revocation of the designation or until one year after the appropriate Federal banking agency notifies the savings association that the appropriate Federal banking agency has revoked the designation on its own initiative.

(c) *Performance criteria.* The appropriate Federal banking agency evaluates the community development performance of a wholesale or limited purpose savings association pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the savings association, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The savings association's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a savings association's option, the appropriate Federal banking agency will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the savings association, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 195.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) Benefit inside assessment area(s). The appropriate Federal banking agency considers all qualified investments, community development loans, and community development services that benefit areas within the savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(2) *Benefit outside assessment area(s).* The appropriate Federal banking agency considers the qualified investments, community development loans, and community development services that benefit areas outside the savings association's assessment area(s), if the savings association has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The appropriate Federal banking agency rates a savings association's community development performance as provided in appendix A of this part.

§ 195.26 Small savings association performance standards.

(a) *Performance criteria*—(1) *Small savings associations that are not intermediate small savings associations.* The appropriate Federal banking agency evaluates the record of a small savings association that is not, or that was not during the prior calendar year, an intermediate small savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small savings associations.* The appropriate Federal banking agency evaluates the record of a small savings association that is, or that was during the prior calendar year, an intermediate small savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small savings association's lending performance is evaluated pursuant to the following criteria:

(1) The savings association's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the savings association's assessment area(s);

(3) The savings association's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the savings association's loans; and

(5) The savings association's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small savings association's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the savings association provides community development services; and

(4) The savings association's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small savings association performance rating.* The appropriate Federal banking agency rates the performance of a savings association evaluated under this section as provided in appendix A of this part.

§ 195.27 Strategic plan.

(a) *Alternative election.* The appropriate Federal banking agency will assess a savings association's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The savings association has submitted the plan to the appropriate Federal banking agency as provided for in this section;

(2) The appropriate Federal banking agency has approved the plan;

(3) The plan is in effect; and

(4) The savings association has been operating under an approved plan for at least one year.

(b) *Data reporting.* The appropriate Federal banking agency's approval of a plan does not affect the savings association's obligation, if any, to report data as required by § 195.42.

(c) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the appropriate Federal banking agency will evaluate the savings association's performance.

(2) *Multiple assessment areas.* A savings association with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if

the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the appropriate Federal banking agency for approval, a savings association shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the savings association has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the savings association in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The savings association shall submit its plan to the appropriate Federal banking agency at least three months prior to the proposed effective date of the plan. The savings association shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content*—(1) *Measurable goals.* (i) A savings association shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A savings association shall address in its plan all three performance categories and, unless the savings association has been designated as a wholesale or limited purpose savings association, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the savings association's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A savings association may submit additional information to the appropriate Federal banking agency on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the appropriate Federal banking agency to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A savings association shall specify in its plan measurable goals that constitute ''satisfactory'' performance. A plan may specify measurable goals that constitute ''outstanding'' performance. If a savings association submits, and the appropriate Federal banking agency approves, both ''satisfactory'' and ''outstanding'' performance goals, the appropriate Federal banking agency will consider the savings association eligible for an ''outstanding'' performance rating.

(4) *Election if satisfactory goals not substantially met.* A savings association may elect in its plan that, if the savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will evaluate the savings association's performance under the lending, investment, and service tests, the community development test, or the small savings association performance standards, as appropriate.

(g) *Plan approval*—(1) *Timing.* The appropriate Federal banking agency will act upon a plan within 60 calendar days after it receives the complete plan and other material required under paragraph (e) of this section. If the appropriate Federal banking agency fails to act within this time period, the plan shall be deemed approved unless the appropriate Federal banking agency extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the appropriate Federal banking agency considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the savings association to public comment on the plan.

(3) Criteria for evaluating plan. The appropriate Federal banking agency evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the savings association's qualified investments; and

(iii) The availability and effectiveness of the savings association's systems for delivering retail banking services and the extent and innovativeness of the savings association's community development services.

(h) *Plan amendment.* During the term of a plan, a savings association may request the appropriate Federal banking agency to approve an amendment to the plan on grounds that there has been a material change in circumstances. The savings association shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The appropriate Federal banking agency approves the goals and assesses performance under a plan as provided for in appendix A of this part.

§ 195.28 Assigned ratings.

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the appropriate Federal banking agency assigns to a savings association a rating of ''outstanding,'' ''satisfactory,'' ''needs to improve,'' or ''substantial noncompliance'' based on the savings association's performance under the lending, investment and service tests, the community development test, the small savings association performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The appropriate Federal banking agency assigns a rating for a savings association assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A savings association that receives an ''outstanding'' rating on the lending test receives an assigned rating of at least ''satisfactory'';

(2) A savings association that receives an ''outstanding'' rating on both the service test and the investment test and a rating of at least ''high satisfactory'' on the lending test receives an assigned rating of ''outstanding''; and

(3) No savings association may receive an assigned rating of ''satisfactory'' or higher unless it receives a rating of at least ''low satisfactory'' on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The appropriate Federal banking agency's evaluation of a savings

association's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the savings association or in any assessment area by any affiliate whose loans have been considered as part of the savings association's lending performance. In connection with any type of lending activity described in § 195.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the savings association's assigned rating, the appropriate Federal banking agency considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the savings association (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the savings association (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

§ 195.29 Effect of CRA performance on applications.

(a) *CRA performance.* Among other factors, the appropriate Federal banking agency takes into account the record of performance under the CRA of each applicant savings association, and for applications under section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)), of each proposed subsidiary savings association, in considering an application for:

(1) The establishment of a domestic branch or other facility that would be authorized to take deposits;

(2) The relocation of the main office or a branch;

(3) The merger or consolidation with or the acquisition of the assets or assumption of the liabilities of an insured depository institution requiring appropriate Federal banking agency approval under the Bank Merger Act (12 U.S.C. 1828(c));

(4) A Federal thrift charter; and

(5) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* An applicant for a Federal thrift charter shall submit with its application a description of how it will meet its CRA objectives. The appropriate Federal banking agency takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The appropriate Federal banking agency takes into account any views expressed by interested parties that are submitted in accordance with the applicable comment procedures in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term ''insured depository institution'' has the meaning given to that term in 12 U.S.C. 1813.

Subpart C—Records, Reporting, and Disclosure Requirements

§ 195.41 Assessment area delineation.

(a) *In general.* A savings association shall delineate one or more assessment areas within which the appropriate Federal banking agency evaluates the savings association's record of helping to meet the credit needs of its community. The appropriate Federal banking agency does not evaluate the savings association's delineation of its assessment area(s) as a separate performance criterion, but the appropriate Federal banking agency reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose savings associations.* The assessment area(s) for a wholesale or limited purpose savings association must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the savings association has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other savings associations.* The assessment area(s) for a savings association other than a wholesale or limited purpose savings association must:

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the savings association has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the savings association has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the savings association chooses, such as those consumer loans on which the savings association elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A savings association may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area. Each savings association's assessment area(s):*

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the savings association's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a savings association serves a geographic area that extends substantially beyond a state boundary, the savings association shall delineate separate assessment areas for the areas in each state. If a savings association serves a geographic area that extends substantially beyond an MSA boundary, the savings association shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Savings associations serving military personnel.* Notwithstanding the requirements of this section, a savings association whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate

its entire deposit customer base as its assessment area.

(g) *Use of assessment area(s).* The appropriate Federal banking agency uses the assessment area(s) delineated by a savings association in its evaluation of the savings association's CRA performance unless the appropriate Federal banking agency determines that the assessment area(s) do not comply with the requirements of this section.

§ 195.42 Data collection, reporting, and disclosure.

(a) *Loan information required to be collected and maintained.* A savings association, except a small savings association, shall collect, and maintain in machine readable form (as prescribed by the appropriate Federal banking agency) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the savings association:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of $1 million or less.

(b) *Loan information required to be reported.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall report annually by March 1 to the appropriate Federal banking agency in machine readable form (as prescribed by the agency) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the savings association originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of $100,000 or less;

(ii) With amount at origination of more than $100,000 but less than or equal to $250,000;

(iii) With an amount at origination of more than $250,000; and

(iv) To businesses and farms with gross annual revenues of $1 million or less (using the revenues that the savings association considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the savings association is subject to reporting under part 1003 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the savings association has a home or branch office (or outside any MSA) in accordance with the requirements of part 1003 of this title.

(c) *Optional data collection and maintenance*—(1) *Consumer loans.* A savings association may collect and maintain in machine readable form (as prescribed by the appropriate Federal banking agency) data for consumer loans originated or purchased by the savings association for consideration under the lending test. A savings association may maintain data for one or more of the following categories of consumer loans: Motor vehicle, credit card, other secured, and other unsecured. If the savings association maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The savings association shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the savings association considered in making its credit decision.

(2) *Other loan data.* At its option, a savings association may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A savings association that elects to have the appropriate Federal banking agency consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the savings association would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the savings association. For home mortgage loans, the savings association shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third-party.* A savings association that elects to have the appropriate Federal banking agency consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the savings association would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the savings association.

(f) *Small savings associations electing evaluation under the lending, investment, and service tests.* A savings association that qualifies for evaluation under the small savings association performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other savings associations pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall collect and report to the appropriate Federal banking agency by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The appropriate Federal banking agency prepares annually for each savings association that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the savings association reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less

than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the savings association reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of $1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the savings association and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the savings association; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The appropriate Federal banking agency, in conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation or the OCC, as appropriate, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the appropriate Federal banking agency may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The appropriate Federal banking agency makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual savings association CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The appropriate Federal banking agency publishes a list of the depositories at which the statements are available.

§ 195.43 Content and availability of public file.

(a) *Information available to the public.* A savings association shall maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the savings association's performance in helping to meet community credit needs, and any response to the comments by the savings association, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the savings association or publication of which would violate specific provisions of law;

(2) A copy of the public section of the savings association's most recent CRA Performance Evaluation prepared by the appropriate Federal banking agency. The savings association shall place this copy in the public file within 30 business days after its receipt from the appropriate Federal banking agency;

(3) A list of the savings association's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the savings association during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the savings association's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a savings association may include information regarding the availability of alternative systems for delivering retail banking services (*e.g.,* ATMs, ATMs not owned or operated by or exclusively for the savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the savings association chooses.

(b) *Additional information available to the public*—(1) *Savings associations other than small savings associations.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall include in its public file the following information pertaining to the savings association and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the savings association has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the savings association's assessment area(s) and outside the savings association's assessment area(s); and

(ii) The savings association's CRA Disclosure Statement. The savings association shall place the statement in the public file within three business days of its receipt from the appropriate Federal banking agency.

(2) *Savings associations required to report Home Mortgage Disclosure Act (HMDA) data.* A savings association required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website at *www.consumerfinance.gov/hmda.* In addition, a savings association that elected to have the appropriate Federal banking agency consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The savings association shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small savings associations.* A small savings association or a savings association that was a small savings

association during the prior calendar year shall include in its public file:

(i) The savings association's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other savings associations by paragraph (b)(1) of this section, if the savings association has elected to be evaluated under the lending, investment, and service tests.

(4) *Savings associations with strategic plans.* A savings association that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A savings association need not include information submitted to the appropriate Federal banking agency on a confidential basis in conjunction with the plan.

(5) *Savings associations with less than satisfactory ratings.* A savings association that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The savings association shall update the description quarterly.

(c) *Location of public information.* A savings association shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate savings association, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the savings association's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a savings association shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The savings association may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a savings association shall ensure that the information required by this section is current as of April 1 of each year.

§ 195.44 Public notice by savings associations.

A savings association shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a savings association having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a savings association that is an affiliate of a holding company shall include the last two sentences of the notices.

§ 195.45 Publication of planned examination schedule.

The appropriate Federal banking agency publishes at least 30 days in advance of the beginning of each calendar quarter a list of savings associations scheduled for CRA examinations in that quarter.

Appendix A to Part 195—Ratings

(a) *Ratings in general.* (1) In assigning a rating, the appropriate Federal banking agency evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with §§ 195.21 and 195.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A savings association's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The savings association's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Savings associations evaluated under the lending, investment, and service tests—* (1) *Lending performance rating.* The appropriate Federal banking agency assigns each savings association's lending performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a savings association's lending performance ''outstanding'' if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a savings association's lending performance ''high satisfactory'' if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a savings association's lending performance ''low satisfactory'' if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a savings association's lending performance ''needs to improve'' if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a savings association's lending performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of $1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The appropriate Federal banking agency assigns each savings association's investment performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a savings association's investment performance ''outstanding'' if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a savings association's investment performance ''high satisfactory'' if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a savings association's investment performance ''low satisfactory'' if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a savings association's investment performance ''needs to improve'' if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a savings association's investment performance as being in ''substantial noncompliance'' if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The appropriate Federal banking agency assigns each savings association's service performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a savings association's service performance ''outstanding'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a savings association's service performance ''high satisfactory'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a savings association's service performance ''low satisfactory'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a savings association's service performance ''needs to improve'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a savings association's service performance as being in ''substantial noncompliance'' if, in general, the savings association demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose savings associations.* The appropriate Federal banking agency assigns each wholesale or limited purpose savings association's community development performance one of the four following ratings.

(1) *Outstanding.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance ''outstanding'' if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance ''satisfactory'' if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance as ''needs to improve'' if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance in ''substantial noncompliance'' if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Savings associations evaluated under the small savings association performance standard*—(1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The appropriate Federal banking agency rates a small savings association's lending performance ''satisfactory'' if, in general, the savings association demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the savings association's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the savings association's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the savings association's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the savings association's assessment area(s).

(ii) *Eligibility for an ''outstanding'' lending test rating.* A small savings association that meets each of the standards for a ''satisfactory'' rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of ''outstanding.''

(iii) *Needs to improve or substantial noncompliance ratings.* A small savings association may also receive a lending test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standard for a ''satisfactory'' rating.

(2) *Community development test ratings for intermediate small savings associations*—(i) *Eligibility for a satisfactory community development test rating.* The appropriate Federal banking agency rates an intermediate small savings association's community development performance ''satisfactory'' if the savings association demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the savings association's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the savings association's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The appropriate Federal banking agency rates an intermediate small savings association's community development performance ''outstanding'' if the savings association demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the savings association's capacity and the need and availability of such opportunities for community development in the savings association's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small savings association may also receive a community development test rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small savings association may receive an assigned overall rating of ''satisfactory'' unless it receives a rating of at least ''satisfactory'' on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small savings association that receives an ''outstanding'' rating on one test and at least ''satisfactory'' on the other test may receive an assigned overall rating of ''outstanding.''

(B) A small savings association that is not an intermediate small savings association that meets each of the standards for a ''satisfactory'' rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of ''outstanding.'' In assessing whether a savings association's performance is ''outstanding,'' the appropriate Federal banking agency considers the extent to which the savings association exceeds each of the performance standards for a ''satisfactory'' rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small

savings association may also receive a rating of ''needs to improve'' or ''substantial noncompliance'' depending on the degree to which its performance has failed to meet the standards for a ''satisfactory'' rating.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The appropriate Federal banking agency approves as ''satisfactory'' measurable goals that adequately help to meet the credit needs of the savings association's assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as ''satisfactory,'' the appropriate Federal banking agency will approve those goals as ''outstanding.''

(3) *Rating.* The appropriate Federal banking agency assesses the performance of a savings association operating under an approved plan to determine if the savings association has met its plan goals:

(i) If the savings association substantially achieves its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the savings association's performance under the plan as ''satisfactory.''

(ii) If the savings association exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the appropriate Federal banking agency will rate the savings association's performance under the plan as ''outstanding.''

(iii) If the savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the savings association as either ''needs to improve'' or ''substantial noncompliance,'' depending on the extent to which it falls short of its plan goals, unless the savings association elected in its plan to be rated otherwise, as provided in § 195.27(f)(4).

Appendix B to Part 195—CRA Notice

(a) *Notice for main offices and, if an interstate savings association, one branch office in each state.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC)] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the [OCC or FDIC]; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the [OCC or FDIC] publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. Your letter, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request from the [OCC Deputy Comptroller or FDIC appropriate regional director] an announcement of our applications covered by the CRA filed with the [OCC or FDIC]. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by savings and loan holding companies.

(b) *Notice for branch offices.*

Community Reinvestment Act Notice

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC)] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the [OCC or FDIC] and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the [OCC or FDIC] evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire savings association is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the [OCC or FDIC] publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional office (address)]. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the [OCC or FDIC]. Your letter, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request an announcement of our applications covered by the CRA filed with the [OCC Deputy Comptroller or FDIC appropriate regional director]. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the (title of responsible official), Federal Reserve Bank of _____ (address) an announcement of applications covered by the CRA filed by savings and loan holding companies.

PART 195—[REMOVED]

■ 9. Remove part 195.

Joseph M. Otting,

Comptroller of the Currency.

[FR Doc. 2020–11220 Filed 6–4–20; 8:45 am]

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Part III

Department of Homeland Security

U.S. Customs and Border Protection

19 CFR Parts 24 and 111

Modernization of the Customs Brokers Regulations; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 24 and 111

[Docket No. USCBP–2020–0009]

RIN 1651–AB16

Modernization of the Customs Brokers Regulations

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations by modernizing the customs brokers regulations to coincide with the development of CBP trade initiatives including, the Automated Commercial Environment (ACE) and the Centers of Excellence and Expertise (Centers). Specifically, CBP proposes to transition all brokers to national permits and to eliminate broker districts and district permits. CBP is also proposing, among other changes, to update the responsible supervision and control oversight framework, ensure that customs business is conducted within the United States, and require that the customs broker have direct communication with the importer. Additionally, CBP proposes to raise the broker license application fees to recover some of the costs associated with reviewing the customs broker license application and conducting the necessary vetting for individuals and business entities (*i.e.,* corporations, partnerships, and associations). The Department of the Treasury retains authority over CBP regulations relating to customs revenue in accordance with the Homeland Security Act of 2002. Accordingly, CBP is publishing a concurrent notice of proposed rulemaking to eliminate all references to customs broker district permit fees (*See* ''Removal of References to Customs Broker District Permit Fee'' RIN 1515–AE43).

DATES: Comments must be received on or before August 4, 2020.

ADDRESSES: You may submit comments, identified by *docket number,* by *one* of the following methods:

- Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments via Docket No. USCBP–2020–0009.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Ms. Cammy Canedo at (202) 325–0439.

FOR FURTHER INFORMATION CONTACT: Melba Hubbard, Chief, Broker Management Branch, (202) 863–6986, *melba.hubbard@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that individuals and business entities must hold a valid customs broker's license and permit to transact customs business on behalf of others. The statute also sets forth standards for the issuance of broker licenses and permits; provides for disciplinary action against brokers in the form of suspension or revocation of such licenses and permits or assessment of monetary penalties; and, provides for the assessment of monetary penalties against other persons for conducting customs business without the required broker's license. Section 641 authorizes the Secretary of the Treasury to prescribe rules and regulations relating to the customs business of brokers as may be necessary to protect the public and the revenue of the United States and to carry out the provisions of section 641.

The regulations issued under the authority of section 641 are set forth in part 111 of title 19 of the Code of Federal Regulations (CFR) (19 CFR part 111) and provide for, among other things, the rules for license and permit requirements; recordkeeping and other duties and responsibilities of brokers; the grounds and procedures for the revocation or suspension of broker licenses and permits; the grounds for the assessment of monetary penalties; and fee payment requirements applicable to brokers under section 641 and 19 U.S.C. 58c(a)(7).

Customs brokers are private individuals and/or business entities (partnerships, associations or corporations) that are licensed and regulated by CBP to assist importers in conducting customs business. Customs brokers have an enormous responsibility to their clients and to CBP that requires them to properly prepare importation documentation, file these documents timely and accurately, classify and value goods properly, pay duties, taxes, and fees, safeguard their clients' information, and protect their licenses from misuse.

The current broker regulations are based on the district system in which entry, entry summary, and post-summary activity are all handled by the ports within a district, for which a broker district permit is required. As a general rule, all merchandise imported into the United States is required to be entered, unless specficially excepted. The act of entering merchandise consists of the filing of paper or electronic documents with CBP containing sufficient information to enable CBP to determine whether imported merchandise may be released from CBP custody. *See* 19 CFR 141.0a(a). Additionally, entry summary refers to documentation that enables CBP to assess duties, and collect statistics on imported merchandise, and determine whether other requirements of law or regulation are met. See 19 CFR 141.0a(b). Pursuant to the regulations, customs business also refers to post-summary activity, including the refund, rebate, or drawback of duties, taxes, or other charges. A district is the geographic area covered by a customs broker permit other than a national

permit. Brokers are required to maintain a physical presence within the district so that the broker is physically close to the port of entry to file any paperwork associated with an entry, entry summary, or post-summary activity.

The Impact of the Centers of Excellence and Expertise and the Automated Commercial Environment on Brokers

Two major developments, the establishment of the Centers of Excellence and Expertise (Centers) and the creation of the Automated Commercial Environment (ACE), have fundamentally changed the traditional ways that customs brokers and CBP interact. Beginning in 2012, CBP developed a test to incrementally transition the operational trade functions that traditionally reside with ports of entry and port directors to the Centers and Center directors. The Centers were established in strategic locations around the country to focus CBP's trade expertise on industry-specific issues and provide tailored support for importers. CBP established these Centers to facilitate trade, reduce transaction costs, increase compliance with applicable import laws, and achieve uniformity of treatment at the ports of entry for the identified industries. On December 20, 2016, CBP published an interim final rule in the **Federal Register** (81 FR 92978) which codified the role of the Centers. This interim final rule transferred to the Centers and Center directors a variety of post-release trade functions that were handled by port directors, including decisions and processing related to entry summaries; decisions and processing related to all types of protests; suspension and extension of liquidations; decisions and processing concerning free trade agreements and duty preference programs; decisions concerning warehouse withdrawals wherein the goods are entered into the commerce of the United States; all functions and decisions concerning country of origin marking issues; functions concerning informal entries; and classification and appraisement of merchandise.

With the transfer of trade functions to the Centers, a significant portion of these activities, including entry summary and post-summary, are now handled directly by the Centers. The Center structure is based on subject matter expertise, as opposed to geographic location, placing them outside of the district system as it currently exists. The current broker regulations based on the district system do not fully reflect how trade functions are being processed by CBP.

The other relevant major development was the creation of ACE. In an effort to modernize the business processes essential to securing U.S. borders, facilitating the flow of legitimate shipments, and targeting illicit goods pursuant to the Customs Modernization Act (Mod Act) (passed as part of the North American Free Trade Agreement Implementation Act (NAFTA), Pub. L. 103–182 § 623 (1993)), and the Security and Accountability for Every (SAFE) Port Act of 2006 (Pub. L. 109–347, 120 Stat. 1884), CBP developed ACE to eventually replace the Automated Commercial System (ACS) as the CBP-authorized electronic data interchange (EDI) system.

On October 13, 2015, CBP published an interim final rule in the **Federal Register** (80 FR 61278) that designated ACE as a CBP-authorized EDI system. The designation of ACE as a CBP-authorized EDI system was effective November 1, 2015. In the interim final rule, CBP stated that ACS would be phased out and anticipated that ACS would no longer be supported for electronic entry and entry summary filing. Filers were encouraged to adjust their business practices so that they would be prepared when ACS was decommissioned.

ACE now offers the operational capabilities necessary to enable users to transmit a harmonized set of import data elements, via a ''single window,'' to obtain the release and clearance of goods. As a result, the International Trade Data System (ITDS) eliminates redundant reporting requirements and facilitates the transition from paper-based reporting and other procedures to faster and more cost-effective electronic submissions to, and communication among, government agencies. These electronic capabilities that allow brokers to file entry information in ACE reduce the need for brokers to be physically close to the ports of entry, as currently required under the district permit regulations.

Discussion of Proposed Amendments

Proposed Major Changes to How Brokers May Operate

Over the past several years CBP has conducted outreach to the broker community through webinars, port meetings, and broker association meetings, to solicit feedback on the role of the broker in this updated business environment. In addition, in light of the changes to CBP's operational structure and electronic capabilities, the Commercial Customs Operations Advisory Committee (COAC) recommended that CBP enable brokers to operate through a single, national permit. The amendments proposed in this NPRM incorporate the feedback received from the broker community, as well as recommendations made by the COAC, and aim to reflect the modern CBP operating environment, the importance of electronic mail (email) as a means of communication, and the electronic processes available for the acceptance of broker information which should alleviate some burden on the ports, brokers, and importers.

CBP proposes to modernize the customs broker regulations contained in 19 CFR part 111 to align with the development of CBP trade initiatives, including ACE and the Centers. Specifically, this document proposes to transition all brokers to national permits and expand the scope of the national permit authority to allow national permit holders to conduct all customs business throughout the customs territory of the United States. To accomplish this, CBP proposes to eliminate broker districts, district permits, district permit waivers, and the requirement for brokers to maintain district offices. Upon adoption of a final rule, CBP will provide guidance to those brokers with only a district permit(s) explaining the process to transition their district permit(s) to a national permit. CBP is also proposing, among other changes, to update the responsible supervision and control oversight framework, ensure that customs business is conducted within the United States, and require that the customs broker have direct communication with the importer. The proposed changes are designed to enable customs brokers to meet the challenges of the modern operating environment while maintaining a high level of service in customs business.

Currently, the broker license application fee is $200. 19 CFR 111.12(a); 111.96(a). In conducting a study on the costs associated with the broker license application, CBP determined that fees of $463 for individuals and $815 for business entities (*i.e.,* corporations, partnerships, and associations) would be necessary to recover the costs associated with reviewing the customs broker license application and conducting the necessary vetting for individuals and business entities. However, in an effort to minimize the financial burden to prospective customs brokers while also recovering some of the increasing costs associated with reviewing the customs broker license application and conducting the necessary vetting, CBP is proposing to increase the customs broker license application fee to only

$300 for individuals and $500 for business entities. While CBP is proposing to raise the application fees, there will be several cost savings as a result of eliminating the district permit requirement and other proposed changes to the broker regulations. The current application fee for a district or national permit is $100 per permit. 19 CFR 111.19(a); 111.96(b). In addition, a customs broker must pay an annual customs broker permit user fee of $147.89 for each district and national permit that they hold. 19 CFR 24.22(h). The annual customs broker permit user fee is subject to adjustment each fiscal year in accordance with the Fixing America's Surface Transportation Act (FAST Act). 19 CFR 24.22(k). 84 FR 37902 (August 2, 2019). For a complete discussion of the cost/benefit analysis for adjusting the fees, see the ''Executive Orders 13563, 12866, and 13771'' section below.

A summary of the specific proposed changes to 19 CFR part 111 is set forth below.

Part 111

As discussed in the Background section above, CBP published an interim final rule that transferred certain trade functions from the port director to the Center director. Similarly, certain broker management functions previously performed by the port director will be transferred to the Centers as part of this proposed rule. As a result, CBP proposes replacing references in part 111 to the ''ports'' and ''port directors'' with references to ''the Centers'' and ''directors of the designated Centers'' (discussed further below). Specifically, CBP proposes amendments to sections 111.1, 111.2, 111.12, 111.14, 111.15, 111.16, 111.19, 111.21, 111.28, 111.30, 111.45, 111.56, 111.57, 111.59, 111.60, 111.61, 111.62, 111.63, 111.64, 111.67, 111.72, 111.78, and 111.96. (19 CFR 111.1, 111.2, 111.12, 111.14, 111.15, 111.16, 111.19, 111.21, 111.28, 111.30, 111.45, 111.56, 111.57, 111.59, 111.60, 111.61, 111.62, 111.63, 111.64, 111.67, 111.72, 111.78, 111.96). In addition, CBP proposes to add a definition of a new term, ''designated Center,'' discussed under Subpart A below.

Subpart A, General Provisions

Definitions for terms used throughout part 111 are found in § 111.1. CBP proposes to add three new terms: ''appropriate Executive Director, Office of Trade'', ''broker's office of record'' and ''designated Center.''

The term ''appropriate Executive Director, Office of Trade'' defines the Executive Director within the Office of Trade who has been delegated first level decision making authority on broker management related issues. The appropriate Executive Director, Office of Trade is the Executive Director responsible for broker management.

The term ''broker's office of record'' defines the office designated by a customs broker as the broker's primary location that oversees the administration of all activities conducted under a national permit. Currently, a broker is required to maintain a physical office in each district where he or she is permitted. *See* 19 CFR 111.19. Under the proposed national permit system, the broker will have the freedom to determine where to establish his or her office(s) within the customs territory of the United States. In order to ensure reliable channels of communication between CBP and the broker, CBP proposes that the broker's office of record must be provided in the application for a national permit and kept up to date. The term ''designated Center'' defines the Center of Excellence and Expertise through which an individual, partnership, association, or corporation submits an application for a broker's license, or as otherwise designated by CBP for currently licensed brokers. Upon adoption of a final rule, CBP will provide guidance informing licensed brokers of the designated Center for license and permit administration purposes. Currently, an applicant submits his or her broker license application to the director of the port where the applicant intends to do business. *See* 19 CFR 111.12. The port where an applicant submits his or her license application serves as the primary point of contact between CBP and the broker for administrative purposes. Under the proposed changes, the designated Center would become the primary point of contact.

This document also proposes to remove the definitions for ''district'' and ''region'' found in § 111.1. Given that these two terms relate specifically to district permits and this document proposes to eliminate district permits, these terms will no longer be necessary.

In addition, CBP proposes to amend three terms found in § 111.1: ''Assistant Commissioner,'' ''permit,'' and ''responsible supervision and control.'' (19 CFR 111.1). The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125), signed into law on February 24, 2016, changed the title ''Assistant Commissioner'' for the Office of Trade to ''Executive Assistant Commissioner.'' TFTEA also changed the name of the ''Office of International Trade'' to the ''Office of Trade.'' As a result, CBP proposes to update these terms in the definition of Assistant Commissioner. Corresponding changes to reflect the name Executive Assistant Commissioner throughout part 111 are proposed in §§ 111.1, 111.14, 111.15, 111.16, 111.17, 111.19, 111.28, 111.42, 111.45, 111.51, 111.52, 111.53, 111.55, 111.56, 111.57, 111.61, 111.67, 111.74, 111.76, 111.77, 111.79, and 111.81 (19 CFR 111.1, 111.14, 111.15, 111.16, 111.17, 111.19, 111.28, 111.42, 111.45, 111.51, 111.52, 111.53, 111.55, 111.56, 111.57, 111.61, 111.67, 111.74, 111.76, 111.77, 111.79, 111.81). Corresponding changes to reflect the name Office of Trade throughout part 111 are proposed in §§ 111.1, 111.19 and 111.30. (19 CFR 111.1, 111.19, 111.30).

The current definition of ''permit'' means any permit issued to a broker under § 111.19. CBP proposes to change the word ''any'' to ''a'' to account for the proposed elimination of district permits. Without district permits, the only permit available under § 111.19 will be a national permit.

The current definition of ''responsible supervision and control'' in § 111.1 provides a list of factors that CBP will consider in determining whether a broker is exercising responsible supervision and control. CBP has determined that the factors which CBP will consider in determining whether a broker is exercising responsible supervision and control should be set forth in revised § 111.28, entitled, ''Responsible supervision.'' As a result, this document proposes to amend the definition of ''responsible supervision and control'' by moving the list of factors from §§ 111.1 through 111.28.

This document proposes to re-order the definition of ''Department of Homeland Security'' so that it appears in proper alphabetical order between the existing definition of ''Customs business'' and the new definition of ''Designated Center.''

Elimination of District Rule

The current regulations in § 111.2 require a customs broker to maintain a license and a district permit. To account for the increased electronic capability that the ACE Single Window now allows, this document proposes amendments to the customs brokers permitting framework. Currently, a district permit is the official document that allows a licensed customs broker to conduct customs business on behalf of others in a particular geographic area known as a broker district. A district permit is required when a broker has been issued a broker license and intends to conduct customs business in a particular broker district. If a broker intends to conduct customs business at ports within multiple broker districts, a

broker must apply for a district permit for each broker district where the broker plans to conduct customs business. Alternatively, a customs broker may apply for a district permit waiver limited to the geographical region in which the broker operates.

In addition to district permits, CBP regulations provide for a national permit which allows a broker to conduct only four activities in all districts: Place an employee in the facility of a client for whom the broker is conducting customs business; file electronic drawback claims; participate in remote location filing; and make representations before Customs on issues arising out of an entry or concerning merchandise covered by an entry after the entry summary has been accepted. *See* current 19 CFR 111.2(b)(2)(i)(A–D).

This document proposes to eliminate district permits and allow a national permit holder to conduct any type of customs business within the customs territory of the United States. This represents a full expansion of the activities allowed under a national permit. CBP has determined that brokers may need to make contact with CBP personnel across the customs territory due to the existence of the Centers and the increasingly automated environment, so there is no longer a reason to restrict national permit holders to the four activities currently allowed. To achieve these changes, CBP proposes to amend the title of § 111.2 by removing the word ''district.'' CBP also proposes to replace references to ''Customs'' with ''CBP'' and references to ''the port director'' with ''the director of the designated Center'' which will allow the agency greater flexibility to conduct broker management at the ports, the Centers, or at Headquarters. The most significant changes proposed would amend paragraph 111.2(b) by renaming paragraph (b) as, ''National Permit.'' In addition, CBP proposes to remove the existing text in paragraphs (b)(1) and (b)(2) and replace them with a sentence reading, ''A national permit issued to a broker under § 111.19 of this part will constitute sufficient permit authority for the broker to conduct customs business within the customs territory of the United States as defined in § 101.1 of title 19.''

Customs Business

Section 111.3 is currently reserved. CBP proposes a new § 111.3 entitled, ''Customs business.'' The proposed new section contains two paragraphs. Proposed paragraph (a) requires that customs business must be conducted within the customs territory of the United States. This is CBP's current practice, and the broker community and CBP have agreed that this requirement should be set forth in the regulations. Proposed paragraph (b) requires each broker to maintain a current point of contact for issues related to the transaction of customs business.

Subpart B, Procedure To Obtain License or Permit

Once a prospective broker passes the customs broker examination, he or she must obtain a license before he or she is allowed to conduct customs business on behalf of others. Section 111.12 sets forth the application requirements to obtain a license. Paragraph (a) describes the license application procedures and fee requirements. Paragraph (b) explains that notice will be posted at the ports where applications are received and that written comments on the applicants are invited. Paragraph (c) describes the procedures for the withdrawal of an application for a broker license.

In paragraph 111.12(a), CBP proposes to update the place of submission for an application from the port where the broker intends to do business to the Center designated by CBP after the applicant has passed the brokers exam. References to port director will become Center director throughout this paragraph. CBP also proposes to eliminate the requirement in paragraph 111.12(a) that an application be submitted under oath to ease the burden on applicants. CBP also proposes to remove the language prescribing the method by which applicants are required to submit fingerprints since they are no longer collected via fingerprint cards, but rather through CBP systems. Eliminating restrictions on the methods for collecting fingerprints would provide CBP as well as the applicant with greater flexibility. Currently, a Center director may reject an application as improperly filed if it fails to meet one of the basic requirements set forth in § 111.11. CBP proposes to add wording to this section to allow a Center director to reject an incomplete application as well.

Currently, an applicant must submit two copies of the application under oath with a $200 application fee and supporting documentation to the port where he or she intends to do business. The application fee is currently the same for both individual and business license applicants. As part of the review of part 111, CBP conducted a fee study and determined that CBP would need to collect fees of $463 for individuals and $815 for business entities (*i.e.,* corporations, partnerships, and associations) to recover the costs associated with reviewing the customs broker license application and conducting the necessary vetting for individuals and business entities. The fee study documenting the proposed fee changes, entitled ''Customs Broker License Application Fee Study,'' has been included in the docket of this rulemaking (Docket No. USCBP–2020–0009). If implemented, however, this fee rate could become an economic disincentive to those pursuing a career as a customs broker. In an effort to minimize the financial burden to prospective customs brokers while also recovering some of the increasing costs associated with reviewing the customs broker license application and conducting the necessary vetting, CBP has decided not to increase the fees to that level but to limit the increase of the customs broker license application fee from $200 to only $300 for an individual license application, and from $200 to $500 for a partnership, association, or corporation license application.

CBP proposes to not set forth the specific application fee in § 111.12 but to cross-reference the relevant fees provision in part 111 at § 111.96(a). CBP proposes similarly to streamline the regulations by removing specific fee amounts throughout part 111 and replacing them with references to the relevant paragraph of the fees provision found in § 111.96.

CBP proposes to remove paragraph (b) of § 111.12 on posting notice of applications because CBP has not found that this provision provides the agency with any useable information. Very little information was received from the public in response to the posted notice of applications and the information obtained through a background investigation is sufficient for CBP to make a determination on the broker license application. In § 111.12(c), CBP proposes to replace ''port director'' with ''director of the designated Center'' and to remove the specific application fee amount for the reason discussed above.

Section 111.13 provides details and procedures for the customs broker examination for an individual broker's license. CBP proposes to remove the references to the $390 examination fee amount throughout this section while retaining the cross-reference to § 111.96 which lists all of the relevant fees in one section. Paragraph (c) describes the circumstances under which a special examination can be requested, including when a brokerage firm loses the individual broker who was exercising responsible supervision and control over an office in another district. Due to the proposed elimination of district permits and the corresponding

requirement to employ at least one individual broker to exercise responsible supervision and control over the customs business conducted in each district, CBP proposes to revise the third sentence in paragraph (c) to reflect the elimination of district permits.

Paragraph (e) describes exam results given to the examinee by written notice and paragraph (f) explains how an examinee can file a written appeal of a failing grade. CBP proposes to amend both paragraphs to allow the use of written or electronic notice of the exam results as well as written or electronic appeal requests and decisions. Examinees who wish to appeal the examination results or request review of the appeal decision should submit those requests in accordance with the instructions provided in the results letter.

Section 111.14 describes the investigation of a license applicant. CBP proposes to update the title of § 111.14 to specify that the investigation being conducted is on the background of the license applicant. In the past, a background investigation had been conducted by an Immigration and Customs Enforcement (ICE) special agent in charge. However, because CBP now uses its own automated systems to conduct broker background investigations and no longer refers applications to an ICE special agent in charge, CBP proposes to remove paragraph (a) on referral of applications for investigation. CBP proposes redesignating paragraph (b) as paragraph (a). Currently, § 111.14 states explicitly that an investigation of the applicant is based on the application. CBP is clarifying that the scope of the background investigation specifically includes information obtained as part of the interview. CBP proposes to include information from the interview in redesignated paragraph (a)(1) to reflect that any willful misstatements or omission of pertinent facts made either on the application or during the interview can provide grounds for denying a broker license. *See* 19 CFR 111.16. As CBP examines an applicant's business integrity, which includes financial reports as part of the background investigation, CBP proposes to add financial responsibility to the scope of that background investigation to make clear that it is part of the background investigation. CBP also proposes to expand the scope of background investigation to include any association with any individuals or groups that may present a risk to national security or a risk to the revenue collection of the United States. This addition would allow CBP the flexibility to deny a broker license to an individual associated with terrorist groups, organized crime, or groups advocating the overthrow of the government.

Current paragraphs (c) and (d) are redesignated as (b) and (c), respectively, in § 111.14. In redesignated paragraph (b), CBP proposes to replace port director with director of the designated Center. In addition, CBP proposes to update the phrase ''report of investigation'' to ''supporting documentation'' because background investigations are no longer conducted by ICE. Redesignated paragraph (c) currently requires the applicant to appear in person before one or more representatives of the Assistant Commissioner for the purpose of undergoing further written or oral inquiry into the applicant's qualification for a license. To allow greater flexibility for both CBP and the applicant, CBP proposes amendments to redesignated paragraph (c) to include other approved methods of communication in addition to the requirement that the applicant make an in-person appearance before the appropriate Executive Director, Office of Trade. In addition, CBP proposes to remove the word investigation in paragraph (c), while retaining the reference to additional inquiry, so as not to cause confusion with the primary background investigation.

Section 111.16 provides the notice procedures and grounds for denial of a license. Paragraph (b) of § 111.16 sets forth the grounds for denial of a license. Currently, the grounds for denial of a license include: (1) Any cause which would justify suspension or revocation of the license of a broker; (2) failure to meet any of the basic requirements for a license; (3) failure to establish business integrity and good character; (4) any willful misstatement of pertinent facts in the license application; (5) any conduct which would be deemed unfair in commercial transactions; or (6) a reputation or record of criminal, dishonest, or unethical conduct. CBP proposes to expand the grounds sufficient to justify denial of a license to also include: The failure to establish financial responsibility; the omission of pertinent facts in the application or interview; detrimental commercial transactions; and any other relevant information uncovered over the course of the background investigation.

Section 111.17 sets forth the review procedures in the event that a license application is denied.

In paragraph (a), CBP proposes tightening the language regarding an applicant's request to provide additional information or arguments in support of a denied application. In addition, CBP proposes adding telephone and other acceptable means to the methods of communication available by which an applicant may request to provide further information to CBP when an application is denied. This addition would provide greater flexibility for both CBP and the applicant.

Section 111.18 governs reapplication for a license. CBP proposes to add a requirement that previously denied applicants address how the deficiencies in their prior applications have been remedied. This change ensures that those applicants filing a reapplication do not simply file the same application again.

Elimination of District Permits

Section 111.19 provides the procedures for obtaining broker permits, responsible supervision and control requirements for permits, and review procedures for the denial of a permit. Currently, an initial district permit is issued, with the $100 permit fee waived, when a broker's license is granted. A broker may subsequently apply for additional district permits and a national permit. An application fee of $100 is required for each additional district permit or for a national permit. 19 CFR 111.19(b) and (f); 111.96(b). In addition, all permits, district and national, are subject to an annual customs broker permit user fee which has been set at $147.89 for fiscal year 2020. 19 CFR 24.22(h); 111.96(c). 84 FR 37902 (August 2, 2019). Currently, national permits are issued by the Broker Management Branch at CBP Headquarters.

The COAC issued a recommendation that CBP enable brokers to operate through a single, national permit. The full text of the COAC recommendations, ''Commercial Customs Operations Advisory Committee Term to Date Recommendations (4/27/16, 7/27/16, 11/17/16, 3/1/17)'' can be found in Docket No. USCBP–2020–0009. The COAC further explained that CBP must modernize its permitting framework to align broker permitting with the challenges and opportunities of 21st century electronic entry and entry summary processing. Upon due consideration of COAC's recommendation, and other input received by CBP from the brokerage community, this document proposes to amend CBP's permit issuing procedures in § 111.19. CBP proposes to eliminate district permits to move to a national-only permit system and to revise the heading text to reflect this change. Specifically, CBP proposes to revise

paragraph (a) to reflect the general purpose of a national permit.

Current paragraph (a) provides that each person granted a broker's license will also receive a district permit for the district of the port where the license was delivered without paying the permit application fee. 19 CFR 111.19(a); 111.96(b). Under this proposal, with the elimination of the district permit, there will no longer be a need for a customs broker to have more than one permit. As a result, CBP will no longer issue the first permit free of charge. Instead, any applicant who obtains a passing grade on the examination for an individual broker's license may apply for a national permit. The national permit application may be submitted concurrently with or after the submission of an application for a broker's license.

Current paragraph (b) provides the procedures for submission of an application for an initial or additional district permit. (19 CFR 111.19(b)). CBP proposes to revise this paragraph to describe the procedures for application and issuance of a national permit, taking much of the content of current paragraph (f) describing the current application for a national permit. The revisions include general procedures and specific application requirements. An application for a national permit must be in the form of a letter or CBP-approved electronic submission to the director of the designated Center and must include the following: Broker license number and date of issuance if available; the name and title of the national permit qualifier for partnership, association, or corporation applicants; legal status and business name information for partnership, association, or corporation applicants; contact information of the office designated as the office of record as defined in § 111.1; contact information for the licensed broker or knowledgeable employee responsible for issues related to the transaction of customs business; contact information for each individual broker employed by partnership, association, or corporation applicants; a list of all employees, with required employee information; a plan for responsible supervision, control and compliance; location where records will be maintained; contact information for the knowledgeable employee responsible for customs and financial recordkeeping; and a receipt or other evidence that all required fees have been paid. The fees must be paid at the designated Center or online with submission of the permit application. In addition, the proposed amendments set forth that the national permit applicant will exercise responsible supervision and control over the activities conducted under the national permit. If the application is on behalf of a partnership, association, or corporation, the applicant is not required to be an officer of the partnership, association, or corporation, but must be a licensed broker employed by the partnership, association, or corporation.

Current paragraph (c) of § 111.19 describes permit fees. (19 CFR 111.19(c)). As CBP is proposing to eliminate district permits, CBP proposes in a concurrent notice of proposed rulemaking, published elsewhere in this issue of the **Federal Register**, conforming amendments to this section by removing all references to fees for district permits. (*See* ''Removal of References to Customs Broker District Permit Fee'' RIN 1515–AE43.)

Current paragraph (d) discusses responsible supervision and control requirements in the district permit context as well as procedures for obtaining a district permit waiver in situations that qualify for exception. (19 CFR 111.19(d)). Under this proposal, the responsible supervision and control requirements are provided in § 111.28. Since CBP proposes to eliminate district permits, the need to maintain a place of business at each port where an application for a district permit has been filed and to employ at least one licensed broker in each district where a permit is held, where those requirements have not been waived, is no longer necessary; accordingly, CBP proposes to remove paragraph (d). The elimination of these requirements resulting from the proposal to move to an expanded national permit system, would greatly lessen the burden on affected customs brokers of conducting customs business throughout the U.S. customs territory.

Current paragraph (e), describing CBP action on a permit application and the maintenance of a list of permitted brokers, is redesignated as paragraph (d). In redesignated paragraph (d), CBP proposes to remove reference to district permits, to replace port director with director of the designated Center, and update cross references within the paragraph. In addition, the list of permitted brokers will now be maintained centrally by CBP as opposed to by individual port directors. As discussed above, current paragraph (f) is revised and the current content has been revised and included in new paragraph (b).

Current paragraph (g) is redesignated as paragraph (e) and CBP proposes amending the paragraph heading to insert the word ''national'' before ''permit.'' Current regulations allow for the presentation of information or arguments in support of the application by personal appearance, or in writing, or both. This allows for, but does not require, the presentation of additional information to address any deficiencies in the original application. Currently in practice, many applicants appeal withouth providing additional information or arguments resulting in a denial of the appeal. In redesignated paragraph (e)(1), CBP proposes tightening the language regarding the request to clarify that the applicant must provide additional information or arguments in support of a denied application. CBP proposes greater flexibility for both CBP and the applicant by allowing the information to be presented in person, by telephone or by other acceptable means.

Under the current regulations, paragraph (d) requires district permit holders to exercise responsible supervision and control over activities conducted under the district permit. As district permits will be eliminated in this proposed rule, CBP is proposing to revise paragraph (f) to make clear that the individual broker who qualifies the national permit will exercise responsible supervision and control over the activities conducted under that national permit.

Subpart C, Duties and Responsibilities of Customs Brokers

Section 111.21 currently provides requirements for broker records. CBP proposes adding a new paragraph (b) and redesignating current paragraphs (b) and (c) as (c) and (d), respectively. Proposed paragraph (b) provides that each broker must provide notification to his designated Center of any known breach of electronic or physical records relating to the broker's customs business. Notification to CBP must be provided within 72 hours of the discovery of the breach with a list of all compromised importer identification numbers. This information will allow for better targeting analysis which contributes to CBP's overall risk management approach.

In addition, CBP proposes to amend redesignated paragraph (d) to require identification of a designated recordkeeping contact who must be a knowledgeable employee who will serve as the party responsible for broker-wide financial and recordkeeping requirements. Each broker must maintain accurate and current contact information for the designated recordkeeping contact within a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI

system is not available, the proposed amendments allow for written submission to the designated Center as an alternative. Under a national permit framework, the maintenance of current broker points of contact will be essential to facilitate efficient processing of entries and entry summaries.

Section 111.23 sets forth the location in which a broker may retain its records relating to customs transactions. Currently, paragraph (a) provides that a customs broker may retain customs records at any location within the U.S. customs territory. (19 CFR 111.23(a)). CBP proposes to amend paragraph (a) to require that a customs broker must maintain customs records, including any electronic records, within the U.S. customs territory. In addition, CBP proposes removing the last sentence of paragraph (a) dealing with the examination of records by CBP. CBP proposes to revise this sentence and place it in a new paragraph (b) to § 111.25 discussed below.

Section 111.24 addresses the confidentiality of broker records, stating in part that the broker must not disclose their contents or any information connected with the records to any persons other than the clients to whom they pertain, the client's surety on a particular entry, and to CBP or other U.S. government officials, except on subpoena by a court of competent jurisdiction. CBP interprets the current provision to provide that, with limited exceptions, including certain accredited officers or agents of the United States and the surety involved in a particular transaction, brokers may not disclose client information to third persons except when ordered to by a court. To overcome this confidentiality requirement, a broker needs to merely request, and receive, a written release from the client authorizing disclosure of that client's information. CBP's longstanding position on this matter is that absent written client consent, a broker may not share client information. CBP continues to believe that protection of the client's business information remains a paramount concern. At the same time, however, CBP recognizes that the blanket prohibition of the current regulation is no longer a good fit for the more modern and efficient business practices brought about by the changing structure and environment of the business community. As a result, CBP proposes to amend § 111.24 by providing an exception for information that properly is available from a source open to the public. The intent of the additional language is to permit disclosure of information that properly is available from government sources or privately controlled sources, whether via a subscription service or not. CBP does not condone the disclosure of information that was not obtained properly and has been released without proper authority.

To account for changes in organizational structure, CBP also proposes replacing the list of specific covered government employees to whom the broker records can be disclosed with a general reference to representatives of the Department of Homeland Security. Finally, CBP proposes to include court orders and written authorization by the client in the exemptions to the confidentiality requirement.

Section 111.25 provides that a broker must maintain records in a way that they are readily available for inspection, copying, reproduction or other official use by authorized CBP personnel. This document proposes to reorganize § 111.25 into three paragraphs: Paragraph (a)—general; paragraph (b)—examination request; and paragraph (c)—recordkeeping requirements. Proposed paragraph (a) contains all but the last sentence of the current language found in § 111.25. In addition, CBP proposes replacing the list of specific government representatives that may inspect, copy, reproduce and use broker records with a general reference to representatives of the Department of Homeland Security. Proposed paragraph (b) contains language found in current § 111.23(a) which requires that requested records be made available at the broker district that covers the CBP port to which the records relate. To account for the proposed elimination of broker districts, CBP proposes to amend this language to require that the recordkeeping contact designated in § 111.21(d) make requested records available at a location specified by Department of Homeland Security (DHS) employees within thirty (30) calendar days. This change would allow CBP greater flexibility in where it could examine the records.

Section 111.27 provides for the audit or inspection of broker records. Due to the creation of DHS and the subsequent transfer of the U.S. Customs Service from the Department of the Treasury to DHS, CBP proposes to remove the reference to officials of the Treasury Department and update it with a reference to DHS officials to reflect current practice.

Responsible Supervision and Control

Section 111.28 provides specific requirements relating to the exercise of responsible supervision and control. CBP is modifying the heading text to read ''Responsible supervision and control.'' As part of its recommendations to move to only a national permit framework, the COAC recommended that the section on ''responsible supervision and control'' include ''requirements that customs brokerage firms employ an adequate number of licensed brokers to ensure responsible supervision and control over their customs business.'' To address this concern, CBP proposes to add a sentence to paragraph (a) to read as follows: ''A sole proprietorship, partnership, association, or corporation must employ a sufficient number of licensed brokers relative to the job complexity, similarity of subordinate tasks, physical proximity of subordinates, abilities and skills of employees, and abilities and skills of the managers.''

As noted above, this document proposes to move the list of factors CBP considers when determining whether a customs broker is exercising responsible supervision and control from the definition of ''responsible supervision and control'' in § 111.1 to paragraph (a) of § 111.28 with some modifications and additions to reflect the changes of moving to only a national permit framework. The current list of factors found in § 111.1 states that CBP will consider all factors listed. CBP proposes to amend the introductory sentence of the list of factors to state that CBP may consider the relevant factors from among those listed on a case-by-case basis.

CBP proposes to retain the ten factors currently found in § 111.1 with the following amendments:

(1) CBP proposes to amend the first factor which currently reads, ''The training required of employees of the brokers,'' to, ''The training provided to broker employees.'' These proposed changes are intended to place the obligation to provide training of employees on the broker.

(2) In the second factor which currently provides for the issuance of written instructions and guidelines to employees of the broker, CBP proposes to remove the word ''written'' to include electronic resources.

(3) CBP proposes to amend the fourth factor covering reject rates by considering the reject rate relative to the overall volume of transactions conducted by the broker. Comparing the number of rejections with the broker's overall volume of entries gives better context to evaluate the quality of responsible supervision and control.

(4) CBP proposes to change the word ''maintenance'' to ''accessibility'' in the fifth factor which addresses CBP

resources available to broker employees. Simply maintaining current editions of the relevant laws and regulations does not indicate responsible supervision and control, ensuring access to these documents, whether hard copy or electronic, is more important in determining responsible supervision and control.

(5) CBP proposes to amend the sixth factor requiring the availability of ''an individually licensed broker'' to ''a sufficient number of individually licensed brokers'' for necessary consultation with broker employees to better account for the proposed national permit operating environment. This change reflects the COAC recommendation to establish a national permit framework with the requirement that brokers employ an adequate number of licensed brokers to ensure responsible supervision and control. Under the current permit framework, a licensed broker (usually the district permit qualifier) must be present at the physical office location in the district to offer guidance to employees. Under the proposed national permit framework it will be crucial that licensed brokers are readily available to employees, both in person or virtually.

(6) CBP proposes to remove the reference to ''district'' in factor nine addressing permit qualifier involvement in brokerage operations to correspond with the proposed elimination of broker districts.

Current factors three, seven, eight and ten remain unchanged.

In addition, CBP proposes to add five new factors that may be considered:

(1) The timeliness of processing entries and payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client;

(2) communications between CBP and the broker;

(3) the broker's responsiveness and action to communications, direction, and notices from CBP;

(4) communications between the broker and its officer(s); and,

(5) the broker's responsiveness and action to communications and direction from its officer(s).

The new factors are being proposed due to their importance in the modern brokerage environment and their importance in evidencing the proper transaction of customs business. A broker filing entries late, paying the government late, or not returning client communications are all evidence of failure to exercise responsible supervision and control. A broker not communicating well with CBP or the broker's officer(s) (not returning calls or emails, etc.) also evidences failure of responsible supervision and control.

Paragraph (b) of § 111.28 describes a broker's requirement to report information regarding its employees to CBP. CBP proposes to restructure paragraph (b) with (b)(1) covering current employees, (b)(2) covering new employees, and (b)(3) covering terminated employees. With each of these paragraphs CBP is proposing that employee lists be submitted and updated through a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, the proposed amendments allow for written submission to the designated Center as an alternative. This document also proposes to provide uniformity for reporting deadlines across the various categories of employees. The proposed changes would allow a broker thirty (30) calendar days to notify CBP of changes to any of the information required under this section regardless of whether the employee is current, new or terminated. CBP proposes also to simplify the employee information that must be provided to account for the proposed elimination of districts and moving to a national permit-only system. The proposed elements include: Name, social security number, date and place of birth, date of hire, and current home address. This proposed change represents a reduction in the information reporting requirements. Finally, CBP proposes removing the requirement that the employee lists be provided in writing to allow for electronic submission.

Due to the reorganization of paragraph (b), CBP proposes to redesignate current paragraph (b)(3) as paragraph (c) and to update the cross-references in new paragraph (c) to account for proposed changes to paragraph (b). In addition, CBP proposes to redesignate current paragraphs (c) and (d) as paragraphs (d) and (e). Redesignated paragraph (d) covers termination of a broker who is a qualifying member of a partnership or a qualifying officer of an association or corporation. Redesignated paragraph (e) addresses changes in ownership of a broker. To account for the proposed elimination of district permits, CBP proposes to update the submission requirement from each port through which a permit has been granted to the director of the designated Center in both redesignated paragraphs.

Section 111.30 provides the notification requirements for when a broker changes his or her business address, organization, name, or location of business records, as well as information concerning the triennial status report and procedures for the termination of a brokerage business. This document proposes changes to the timing and method by which a broker must notify CBP of changes in his or her business address, organization name, and other updates required by § 111.30. Paragraph (a) covers change of address. CBP proposes to revise paragraph (a) to change the timing requirement from immediate notification in writing to notification within ten (10) calendar days through a CBP-authorized electronic data interchange (EDI) system. EDI is the method in which the trade transmits data electronically to CBP systems. If a CBP-authorized EDI system is not available, the proposed amendments allow for written submission to the designated Center as an alternative. These changes are intended to provide greater flexibility for both the broker and CBP.

Paragraph (b) of § 111.30 covers changes in an organization. CBP proposes to revise the introduction to paragraph (b) to change the timing requirement from immediate notification in writing to the port director to notification within ten (10) calendar days in writing to the director of the designated Center. CBP then proposes to redesignate current paragraph (b)(2) as (b)(3) and adding a new paragraph (b)(2) to require that a brokerage notify CBP of the date on which a licensed employee ceases to be the national permit qualifier for purposes of § 111.19(a), and the name of the licensed employee who will succeed as the permit qualifier. Currently, CBP requires updated information when there is a change in a brokerage's license qualifier. Under the proposed national permit system, the licensed member or officer who qualifies the brokerage for the license may be different from the licensed employee who qualifies the brokerage for the national permit.

Paragraph (c) of § 111.30 covers name changes. CBP proposes to amend paragraph (c) to account for the proposed elimination of district permits.

Paragraph (d) of § 111.30 describes the requirements of the status report. CBP proposes to update the paragraph header to triennial status report to better reflect industry terminology. In addition, CBP proposes changes to allow for electronic filing by allowing submission of payment or valid proof of payment with the triennial status report. CBP also proposes to allow for filing through a CBP-authorized EDI system when available. If a CBP-authorized EDI system is not available, the proposed amendments allow for written

submission to the designated Center as an alternative.

CBP proposes to reorganize paragraph (d)(2) in order to add a new paragraph (d)(2)(ii). Specifically, current paragraphs (d)(2)(i), (ii), and (iii) become (d)(2)(i)(A), (B) and (C) and a new paragraph (d)(2)(ii) is added to read: An individual broker not actively engaged in transacting business as a broker must provide CBP his or her current mailing address, and state whether or not he or she still meets the applicable requirements of §§ 111.11 and 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53. This new paragraph is added to ensure that CBP maintains current contact information on inactive brokers. Next, CBP proposes to reorganize paragraph (d)(3) into paragraph (d)(3)(i) which requires information on the broker's office of record as well as the license and permit qualifier for the partnership, association or corporation. The proposed changes create consistent use of terminology and reflect the importance of maintaining current contacts under the proposed national permit framework. In addition, CBP proposes a new paragraph (d)(3)(ii) to require that a partnership, association or corporation broker also affirm in their triennial report that they continue to meet all applicable requirements. The proposed new paragraph is consistent with the triennial reporting requirements for individual brokers.

In paragraph (d)(4) of § 111.30 regarding failure to file a triennial report timely, CBP proposes to remove references to port director as the CBP officer who transmits a notice of suspension and update them with references to CBP to provide the agency with flexibility as to where CBP broker management is conducted—at the port, at a Center of Excellence and Expertise, or at Headquarters. In addition, when a broker wishes to have his or license reinstated CBP proposes to allow a broker to submit proof of payment of the required fee within 60 days of the notice of suspension at the time of the filing of the required triennial report to allow for online payment separate from submission of the report. Finally, CBP proposes to replace references to *Customs Bulletin* with **Federal Register** as the means of publishing notice of broker license revocations to reflect current practice. Documents published in the **Federal Register** are reproduced in the *Customs Bulletin.*

Section 111.32 governs false information. CBP proposes to modify the section to make clear that a broker must not give, or solicit or procure the giving of, any information or testimony showing that the broker should have known that the information is false or misleading.

In addition, CBP proposes to add a new sentence requiring a broker to document and report to CBP when the broker separates or terminates the broker's representation of a client as a result of the broker determining that the client is intentionally attempting to defraud or otherwise commit any criminal act against the U.S. Government. Under the current CBP regulations, when brokers discover that a client has not complied with the law or made errors or omissions in documents, affidavits, or other paper required by law, the broker must advise the client promptly of the noncompliance, error, or omission. *See* 19 CFR 111.39(b). The proposed new requirement puts an affirmative duty on the broker to document and report to CBP when the broker terminates representation of a client as a result of determining that the client is attempting to defraud or otherwise commit any criminal act against the U.S. Government. This requirement covers situations where a broker advises the client of a noncompliance, error, or omission, the client directs the broker to continue such noncompliance, error, or omission, and in response the broker terminates its relationship with the client. The proposed changes will allow brokers to act as ''force multipliers'' in combating fraud and other schemes against the government.

Section 111.36 addresses broker relations with unlicensed persons, including freight forwarders. The regulation sets forth conditions under which a broker may compensate a freight forwarder for referring brokerage business. One of the conditions is that the freight forwarder cannot, in a compensation agreement, forbid or prevent direct communication between the importer or other parties in interest and the broker. CBP proposes adding drawback claimants to the persons that a freight forwarder cannot forbid or prevent direct communication with by a broker in a compensation agreement. In addition, CBP proposes a new requirement that a broker must not rely on a customs power of attorney granted by a freight forwarder, but rather that the broker must obtain a customs power of attorney directly from the importer of record or drawback claimant. This proposed amendment is intended to clarify that the freight forwarder cannot serve as a barrier to communications between the broker and the importer of record or drawback claimant and to address issues of identity theft, supply chain security, fee transparency, and to help ensure that unlicensed persons are not benefitting from the customs business conducted. This proposed change is also consistent with a COAC recommendation that CBP require that brokers obtain a power of attorney directly from the importer of record. The COAC recommended further that nothing should prevent the broker from communicating directly with the importer of record.

Section 111.39 describes the requirements for brokers giving advice to clients. Currently, paragraph (a) requires a broker not to withhold from or provide false information to a client. CBP proposes moving part of the second sentence from paragraph (a) to a new paragraph (b) titled ''Due diligence'' and, in that paragraph, adding language to specify that a broker must practice due diligence in providing advice on the proper payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

CBP next proposes redesignating current paragraphs (b) and (c) as a new paragraphs (c) and (d). Current paragraph (b) concerns what a broker should do when the broker is aware that a client has not complied with the law or has made an error in or omission from any document, affidavit, or other paper which the law requires the client to execute. That paragraph is proposed to be updated by removing the word ''paper'' and replacing it with ''record'' so as to include any electronic records. Finally, CBP proposes adding a new sentence to the end of new paragraph (c) to require that the broker must advise the client on the proper corrective actions required and retain a record of the broker's communication with the client in accordance with 19 CFR 111.23. The proposed new language adds an affirmative duty to document the broker's communication with the client. This clarifies the brokers' role as ''force multipliers'' by contributing to the informed compliance of their clients. There are no proposed changes to redesignated paragraph (d).

Section 111.45 provides for revocation of a broker's license and/or permit by operation of law, the corresponding notification requirements for CBP, and the continuing obligations of the broker at issue. Paragraph (a) describes revocation of a license. CBP proposes to revise paragraph (a) to add that the national permit for a partnership, association, or corporation will also be revoked if the partnership, association, or corporation fails to employ a licensed customs broker who qualifies the national permit for any continuous period of 180 days. In

addition, CBP proposes to add a new sentence to the end of paragraph (a) to provide that if the license of a partnership, association, or corporation is revoked by operation of law, CBP will notify the organization of the revocation.

Paragraph (b) of § 111.45 describes revocation of a permit. To account for the proposed elimination of district permits, CBP proposes to amend the heading to read ''Annual broker permit fee,'' to remove the current language referring to requirements specific to district permits, and to replace it with language providing that: If a broker fails to pay the annual permit user fee pursuant to § 111.96(c), the permit is revoked by operation of law. In addition, the director of the designated Center will notify the broker in writing of the failure to pay and revocation of the permit.

Current paragraph (c) of § 111.45 describes the notification of revocation procedures. Since CBP proposes to address notice in paragraphs (a) and (b), it is proposed to rename paragraph (c) ''Publication'' and revise the provision to provide that notice of any revocation under this section will be published in the **Federal Register** to reflect current practice.

Paragraph (d) of § 111.45 provides that even if a broker's license or permit is revoked by law, other sanctions may still be applicable. CBP proposes to update the second cross-reference to reflect other proposed changes to this section.

Subpart D, Cancellation, Suspension, or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation

Section 111.53 provides the grounds for suspension or revocation of a license or permit. CBP proposes to redesignate current paragraph (g) as paragraph (h) in order to add a new paragraph (g). Proposed paragraph (g) will cover convictions of committing or conspiring to commit an act of terrorism as described in section 2332b of title 18, United States Code. (*See* 19 U.S.C. 1641(d)(1)(G)).

Section 111.55 covers the investigation of complaints. This section currently provides that every disciplinary complaint or charge against a broker will be forwarded for investigation to the special agent in charge. CBP does not refer all complaints or charges to a special agent in charge. To better reflect the current practice, CBP proposes to replace references to the special agent in charge with references to the appropriate investigative authority within DHS. In addition, CBP proposes to change the word ''will'' to ''may'' to allow for agency discretion in pursing civil or administrative investigation of disciplinary complaints against a broker.

Section 111.56 provides for the review of the investigation report. This provision currently references the report of investigation which is a term specific to the process involving investigation by the special agent in charge. Because CBP no longer refers all complaints or charges to the special agent in charge, this document proposes to replace ''report of investigation'' with ''report on the investigation of complaints, or if there is no report on the investigation of complaints, other documentary evidence,'' to better reflect current practice.

Section 111.62 describes the content requirements for a notice of charges. CBP proposes to amend paragraph (d) to remove the 10-day notice of the time and place of a hearing. CBP will continue to provide notice of the time and place of a hearing as provided for in paragraph 111.64(a). In addition, paragraph (e) states that the broker may file verified answers to any charges prior to the hearing. Currently, the broker is required to file his or her verified answers in duplicate. CBP proposes to remove the requirement to file in duplicate to better reflect the current electronic business environment.

Section 111.63 covers service of notice and statement of charges. Paragraph (a) covers individual brokers. CBP proposes to amend paragraph (a)(2) by removing the requirement that the return card be signed solely by the addressee. In practice, this is unlikely to happen and amending the paragraph to allow for certified mail, return receipt requested, addressed to the broker's office of record brings the requirement in to line with paragraph (c) on certified mail and evidence of service. In addition, CBP proposes to amend paragraph (c) by removing the word ''duly'' and by adding reference to the broker's office of record. This change will permit CBP to rely upon mailing to the addresses provided to CBP by the broker.

Section 111.67 provides for information relating to the hearing. Current paragraph (e) provides that the Assistant Commissioner will designate the government representative. CBP proposes to remove paragraph (e) to better reflect current practice as attorneys from the Office of Chief Counsel represent the government at all broker hearings and work with the client offices to determine the necessary witnesses and representatives.

Section 111.74 describes the decision and notice of suspension, revocation or a monetary penalty. CBP proposes to remove the reference to publication in the *Customs Bulletin* because documents published in the **Federal Register** are reproduced in the *Customs Bulletin.*

Section 111.76 provides for procedures by which a broker may apply to CBP to reopen a case if an appeal is not filed. Paragraph (a) describes the grounds for reopening the case. Currently paragraph (a) provides that a broker may make written application in duplicate to reopen the case to have the order set aside or modified. CBP proposes to remove the requirement to file in writing and to file in duplicate, and to allow for electronic communication and to better reflect the current electronic business environment.

Section 111.77 describes how CBP will provide notice of a vacated or modified order. CBP proposes to remove the reference to publication in the *Customs Bulletin* because documents published in the **Federal Register** are reproduced in the *Customs Bulletin.*

Section 111.81 covers settlement and compromise. CBP proposes to remove the language regarding approval of the Secretary of Homeland Security, or his designee, as the authority to settle and compromise has been delegated from the Secretary of Homeland Security to the Commissioner of U.S. Customs and Border Protection and subsequently to the Executive Assistant Commissioner, as discussed in detail below, making such approval no longer necessary.

Subpart E, Monetary Penalty and Payment of Fees

Section 111.91 provides the grounds for imposition of a monetary penalty and sets forth the maximum penalty. CBP proposes to update the cross reference to § 111.53 to reflect the additional grounds for suspension or revocation of a license or permit proposed in this document.

Section 111.96 describes fees required throughout part 111. As discussed above, CBP has conducted a fee study to review the license application fee. The fee study documenting the proposed fee changes, entitled ''Customs Broker License Application Fee Study,'' has been included in the docket of this rulemaking (Docket No. USCBP–2020–0009). Paragraph (a) describes the license application fee, the examination fee and the fingerprint fee. The current license application fee is $200. Based on the findings of the fee study, CBP

proposes to increase the license application fee and charge different fees for individual license applications and partnership, association or corporation license applications. Specifically, CBP proposes an increase in the license application fee from $200 to $300 for an individual license application and from $200 to $500 for a partnership, association, or corporation license application.

Paragraph (b) of § 111.96 describes the permit application fee. CBP proposes to revise the paragraph to reflect the proposed elimination of district permits. Paragraph (c) of § 111.96 describes the permit user fee. To reflect the proposed elimination of district permits, CBP is proposing in a concurrent notice of proposed rulemaking, published elsewhere in this issue of the **Federal Register**, conforming amendments to eliminate all references to customs broker district permit fees, including proposed amendments to paragraph (c) of § 111.96 (*See* ''Removal of References to Customs Broker District Permit Fee'' RIN 1515–AE43).

Paragraph (d) of § 111.96 describes the status report fee. CBP proposes to amend the paragraph header to read triennial status report fee which matches industry terminology. In addition, CBP proposes to explain that the triennial status report must be filed through the CBP-authorized EDI system, if available. If a CBP-authorized EDI system is not available, the triennial status report must be filed with the director of the designated Center.

Delegation of Authority

The Secretary of Homeland Security and CBP officials are empowered to delegate authority. Changes made in the proposed regulations reflect areas where the Secretary of Homeland Security and CBP officials have, or might, delegate certain decision-making authority. DHS Delegation Number 7108 (May 5, 2015) delegates the authority regarding the denial, revocation, suspension, or cancellation of customs brokers' licenses and permits as well as settlements and penalties from the Secretary of Homeland Security to the Commissioner of Customs and Border Protection. Additional delegations of authority that have been made within CBP are reflected in the proposed regulatory text. CBP proposes changes to reflect these delegations in §§ 111.13, 111.14, 111.15, 111.16, 111.17, 111.19, 111.28, 111.30, 111.51, 111.52, 111.53, 111.55, 111.56, 111.57, 111.61, 111.66, 111.69, 111.70, 111.71, 111.72, 111.74, 111.75, 111.76, 111.77, 111.79, and 111.81. (19 CFR 111.13, 111.14, 111.15, 111.16, 111.17, 111.19, 111.28, 111.30, 111.51, 111.52, 111.53, 111.55, 111.56, 111.57, 111.61, 111.66, 111.69, 111.70, 111.71, 111.72, 111.74, 111.75, 111.76, 111.77, 111.79, and 111.81.) The proposed changes reflect the delegation orders in place to allow for greater flexibility in administering broker-related decisions within CBP and DHS.

Nomenclature Updates

This document also proposes to update the nomenclature throughout part 111. As noted above, to reflect the establishment of the Centers, CBP proposes replacing references in part 111 to the ports and port directors with references to the Centers and directors of the designated Centers. Also previously discussed, CBP proposes to update all instances of Assistant Commissioner to Executive Assistant Commissioner and all instances of Office of International Trade to Office of Trade. In addition, CBP proposes a grammatical change to paragraph (a)(1) of § 111.42, by amending the word ''Customs'' to be in the lower case. (19 CFR 111.42). Finally, due to the renaming of U.S. Customs to Customs and Border Protection (CBP) this document proposes to replace references to Customs with CBP in §§ 111.2, 111.12, 111.21, 111.25, 111.28, 111.30, 111.53, 111.91, 111.92, 111.94, and 111.96. (19 CFR 111.2, 111.12, 111.21, 111.25, 111.28, 111.30, 111.53, 111.91, 111.92, 111.94, 111.96).

Other Conforming Amendments

Part 24

Part 24 of title 19 of the CFR (19 CFR part 24) sets forth the regulations regarding customs financial and accounting procedures. Section 24.1 provides for the collection of Customs duties, taxes, fees, interest, and other charges. To reflect the proposed elimination of the district permit, this document proposes conforming amendments to § 24.1(a)(3)(i). Section 24.22 describes the customs Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees and limitations for certain services. Specifically, paragraph (h) of § 24.22 describes the customs broker permit user fee. In a concurrent notice of proposed rulemaking, published elsewhere in this issue of the **Federal Register**, CBP proposes conforming amendments to § 24.22(h) and (i)(9) to eliminate all references to broker district permit fees (*See* ''Removal of References to Customs Broker District Permit Fee'' RIN 1515–AE43).

Part 111

The authority for part 111 currently provides a specific authority citation for § 111.3. When the text of § 111.3 was transferred to § 111.2 in a final rule published in the **Federal Register** (65 FR 13880) on March 15, 2000, CBP inadvertently did not revise the specific authority citation for either section. CBP proposes to correct this by revising the specific authority citation for § 111.2 by adding that this section is also issued under 19 U.S.C. 1484 and 4798, and by removing the specific authority citation for § 111.3.

Executive Orders 13563, 12866, and 13771

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

This rule is not a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation. This proposed rule is expected to be an E.O. 13771 deregulatory action. CBP has prepared the following analysis to help inform stakeholders of the impacts of this proposed rule.

TABLE 1—SUMMARY OF CHANGES AS A RESULT OF THE RULE

Provision	Section	Change	Cost/benefit
111.1	Subpart A	Update/eliminate definitions; change primary point of contact to designated Center.	Neutral—changes reflect current practice and statutory changes.

TABLE 1—SUMMARY OF CHANGES AS A RESULT OF THE RULE—Continued

Provision	Section	Change	Cost/benefit
111.2	Subpart A	Eliminate district permits and require national permits.	$40,000 annualized net benefit. See section 3.14.
111.3	Subpart A	Requires customs business to be conducted within the customs territory of the US; brokers must maintain a point of contact.	Neutral—clarifies current regulations and reflects current practice.
111.11	Subpart A	Adds that Center director may reject an incomplete application.	Benefit—increases effeciency.
111.12(a)	Subpart B	Updates the place of submission for applications; removes requirement that applications are submitted under oath.	Benefit—increases efficiency and reduces the burden on applicants.
111.12(b)	Subpart B	Remove requirement to post notice of applications.	Benefit—reduces the burden on CBP.
111.13	Subpart B	Revisions to reflect new national permit system; written and electronic notification of examination results.	Neutral—the costs of the new fee system are addressed in section 3.14.
111.14	Subpart B	Clarifies that CBP may use information from the interview in background investigation.	Neutral—reflects current practice.
111.16	Subpart B	Expansion of the grounds to justify the denial of a license.	Benefit—increases professionalism.
111.17	Subpart B	Adds new method to communicate further information to CBP for appeal of an application denial.	Benefit—greater flexibility.
111.18	Subpart B	Requires applicants to provide new or corrected information when re-applying.	Benefit—fewer application appeals will be rejected for lack of new information. Cost—applicants will need to expend time in collecting and submitting information.
111.19	Subpart B	Replacing district permits with national permits	$40,000 annualized net benefit. See section 3.14.
111.19(b)	Subpart B	Revision of the procedures to apply for a permit to account for the switch from district to national permits.	Neutral—the process is very similar, but with a national permit.
111.19(c)	Subpart B	Revision of permit fees	See ''Removal of References to Customs Broker District Permit Fee'' RIN 1515–AE43.
111.19(d)	Subpart B	Elimination of the requirement to maintain a place of business in each port where a district permit is held.	Benefit—allows for greater flexibility and efficiency for brokers and CBP.
111.19(e)	Subpart B	Language updates to reflect the change to national permits and designated Centers.	See above.
111.19(g)	Subpart B	Clarifies applicants must provide additional information or arguments in support of a denied application; allows information to be provided through various communication methods.	Benefit—increases professionalism and decreases time spent by CBP acquiring information. Cost—requires applicants to expend time in providing additional information.
111.21	Subpart C	Requires brokers to notify CBP of any electronic records breach and to provide CBP a designated point of contact for recordkeeping in addition to the current contact provided for financial queries.	Benefit—enhances CBP's risk management approach. See section 3.3/section 3.8.
111.23	Subpart C	Requires that electronic records be stored within the customs territory of the U.S.	Benefit—increases security. See section 3.3.
111.24	Subpart C	Clarifies disclosure rules	Benefit reduces confusion. See section 3.9.
111.25	Subpart C	Revises guidelines for CBP inspection of broker records with the elimination of broker districts.	Neutral—see section 3.4.
111.27	Subpart C	Update of language to reflect the transition of responsibilities from Treasury to DHS following the creation of DHS.	Neutral—reflects the current environment.
111.28	Subpart C	Clarifying requirements in relation to responsible supervision and control and allows for electronic submission of employee lists.	Benefit—increases flexibility. See section 3.10.
111.30	Subpart C	Modification to the timing requirement for when a broker notifies CBP of information changes, including a new requirement for inactive brokers to provide CBP with up-to-date contact information.	Benefit—increases professionalism, keeps CBP better informed, and allows greater efficiency for broker's changing status. Cost—inactive brokers will expend time to submit their information.
111.32	Subpart C	Places an affirmative burden on the broker to report to CBP when a broker terminates a client relationship as a result of determining that the client is attempting to defraud the U.S. government.	Cost—$2,907 annually Benefit—improves CBP's awareness of potential illegal activity. See section 3.5.
111.36	Subpart C	Modifies the requirements for brokers when dealing with freight forwarders.	Neutral—time spent does not change. See section 3.6.

TABLE 1—SUMMARY OF CHANGES AS A RESULT OF THE RULE—Continued

Provision	Section	Change	Cost/benefit
111.39	Subpart C	Guidelines for how brokers may behave with clients; requires brokers to advise clients of corrective actions and maintain communication records.	Neutral—reflects current practice See section 3.11.
111.45	Subpart C	Updates to reflect the change to national permits	Neutral—specifies national permit.
111.53	Subpart D	Adds conviction of committing or conspiring to commit an act of terrorism to the grounds for suspension or revocation of a license or permit.	Benefit—increases professionalism.
111.55	Subpart D	Updates to reflect the current practice of not referring all complaints to a special agent.	Neutral—reflects current practice.
111.56	Subpart D	Updates to reflect current practice in the investigation of a complaint.	Neutral—reflects current practice.
111.62	Subpart D	Updates to requirements for notification of charges to reflect new electronic options.	Neutral—reflects improved technology.
111.63	Subpart D	Removes the requirement that a return card be signed solely by the addressee; permits CBP to rely upon the mailing address provided by the broker.	Benefit—increases efficiency.
111.67	Subpart D	Updates to reflect the current practice of Office of Chief Counsel representing the government.	Neutral—reflects current practice.
111.74	Subpart D	Eliminates the requirement to publish suspension, revocation, or penalty notices in the Customs Bulletin.	Benefit—reduces the burden on CBP.
111.76	Subpart D	Allows for electronic communication when filing an appeal.	Benefit—increases efficiency.
111.77	Subpart D	Eliminates the requirement that CBP provide notice of a vacated or modified order in the Customs Bulletin.	Benefit—reduces the burden on CBP.
111.81	Subpart D	Updates to the signing requirement for a settlement to reflect delegation of authorities.	Neutral—reflects delegation of existing authority.
111.96	Subpart E	Updates to the user application fee	See above.

1. Need and Purpose of Rule

The primary purpose of this rule is to formalize recent changes in the permiting of licensed customs brokers. To take advantage of new technologies and reflect a changing trade environment, CBP is switching from a district permit system to a national permit system. Licensed brokers who have traditionally been required to apply for and operate under a permit for each district in which they do business may now work under a single, national permit.

The rule also proposes changes in the license application fees charged by CBP, which CBP proposes to increase to cover a greater portion of the costs CBP has always faced. Because these costs are being moved from CBP to brokers, they are considered a transfer. Finally, the rule contains several provisions meant to professionalize the broker industry, formalize current practices into regulations, and adapt regulations to reflect technological advancements. The majority of brokers already follow many of these practices, like storing records electronically within the customs territory of the United States and reporting clients they know have attempted to commit fraud. This rule provides better and more concrete guidance in these matters, at little or no cost to CBP or customs brokers.

Monetized costs for customs brokers would result from no longer receiving a first district permit concurrent with a broker's license, and the requirement for brokers to notify CBP when separating from a client relationship due to attempted fraud or criminal acts. The five-year total monetized cost of the rule ranges from $44,000 discounted at 3 percent to $39,200 discounted at 7 percent. The annualized cost is approximately $9,600 using both 3 and 7 percent. Customs brokers who do not concurrently receive their first district permit with their brokers license would save the cost of district permit fees. Additionally, CBP and customs brokers would save time for applying for and reviewing district permit applications and waivers. The five-year total monetized cost savings from this rule ranges from $227,100 discounted at 3 percent to $202,100 discounted at 7 percent. The annualized cost savings ranges from $49,600 using a 3 percent discount rate to $39,700 using a 7 percent discount rate. The switch to a national permit and the other changes to this rule lead to an overall net monetized total five-year cost savings ranging from $183,100 discounted at 3 percent to $163,000 discounted at 7 percent. The net annualized cost savings ranges from approximately $40,000 to $39,700 using a 3 and 7 percent discount rate, respectively.

Customs brokers are private individuals and/or business entities (partnerships, associations or corporations) that are licensed and regulated by CBP to assist importers in conducting customs business. Customs brokers have an enormous responsibility to their clients and to CBP that requires them to properly prepare importation documentation, file these documents timely and accurately, classify and value goods properly, pay duties, taxes, and fees, safeguard their clients' information, and protect their licenses from misuse.

In an effort to perform these duties and responsibilities efficiently, customs brokers have embraced recent technological advances such as making the programming and business process changes necessary to use the Automated Commercial Environment (ACE). ACE provides a single, centralized access point to connect CBP and the trade community. Through ACE, manual processes are streamlined and automated, and the international trade community is able to more easily and efficiently comply with U.S. laws and regulations. CBP itself has also

endeavored to embrace these technological advances, to not only more efficiently perform its duties of facilitating legitimate trade while making sure that proper revenue is collected, but also to provide more efficient tools for customs brokers to file and monitor the information submissions necessary for a timely and accurate entry filing. One of the central developments that will allow CBP to perform its operational trade functions more effectively is the transition to the Centers of Excellence and Expertise (Centers). Beginning in 2012, CBP developed a test to incrementally transition the operational trade functions that traditionally reside with port directors to the Centers. The Centers were established in strategic locations around the country to focus CBP's trade expertise on industry-specific issues and provide tailored support for importers. CBP established these Centers to facilitate trade, reduce transaction costs, increase compliance with applicable import laws, and achieve uniformity of treatment at the ports of entry for the identified industries. On December 20, 2016, CBP published an interim final rule in the **Federal Register** (81 FR 92978) ending the Centers test and establishing the Centers as a permanent organizational component of CBP. The current broker regulations are based on the district system in which entry, entry summary, and post-summary activity are all handled by the ports within a permit district. With the transfer of trade functions to the Centers, a significant portion of these activities, including entry summary and post-summary, are now handled directly by the Centers. The Center structure is based on subject matter expertise, as opposed to geographic location, placing them outside of the district system as it currently exists. With this proposed rule, CBP proposes to modernize the regulations governing customs brokers to better reflect the current work environment and streamline the customs broker permitting process.

2. Background

It is the responsibility of CBP to ensure that only qualified individuals and business entities can perform customs business on behalf of others. CBP accomplishes this task by only issuing licenses to individuals and business entities that meet the below criteria: [1]

Individual customs broker license requirements:

- Must pass the customs broker license examination within 3 years of submitting the license application;
- Must be a U.S. citizen and attain the age of 21 prior to submitting the license application;
- Must possess good moral character; and
- Must pay the requisite fee.

Business entity customs broker license eligibility:

Partnerships

- Must have at least one member of the partnership who is a licensed customs broker; and
- Must pay the requisite fee.

Associations and Corporations

- Must have at least one officer who is a licensed customs broker;
- Must be empowered under its articles of association or articles of incorporation to transact customs business as a broker; and
- Must pay the requisite fee.

Currently, CBP requires all prospective brokers, both individuals and business entities, to submit CBP Form 3124: *Application for Customs Broker License* to the port of entry at which they intend to conduct customs business. CBP Form 3124 is used to verify that prospective customs brokers satisfy the requirements for receiving a customs broker's license. The customs territory of the United States is divided into seven customs regions. Within each region, the customs territory of the United States is further divided into districts; there are currently approximately 40 [2] customs districts.[3] [4] Currently, a district permit is required for each district in which a customs broker intends to conduct customs business. Each district permit requires a one-time permit fee of $100 and an annual user fee of $147.89.[5] A customs broker has the option of receiving his/her first district permit concurrently with the receipt of the customs broker license, in which case the $100 permit fee is waived. Even if this option is used, the customs broker is still responsible for the annual user fee of $147.89.[6] However, this option is not exercised often for individual customs broker license holders. Currently, according to a CBP Broker Management Branch estimate, approximately two (2) percent of individual customs broker license holders get their first district permit concurrently issued with the receipt of their broker's license. The majority of individuals do not take advantage of this benefit. Most licensed brokers file exclusively under a corporate permit and do not need to get an individual permit, saving them the annual user fee. On the other hand, according to CBP's Broker Management Branch, 100 percent of current corporate license holders get their first district permit concurrently issued with their customs broker license.

A broker who intends to conduct customs business at a port within a district for which the broker does not have a permit must submit an application for a district permit in a letter to the director of the port at which the broker intends to conduct customs business. Each application for a district permit must set forth or attach the following:

- The applicant's broker license number and date of issuance;
- The address where the applicant's office will be located within the district and the email address and telephone number of that office;
- A copy of a document which reserves the applicant's business name with the State or local government;
- The name, broker license number, office address(es), telephone number, and email address of the individual broker who will exercise responsible supervision and control over the customs business transacted in the district;
- A list of all other districts for which the applicant has a permit to transact customs business;
- The place where the applicant's brokerage records will be retained and the name of the applicant's designated recordkeeping contact; and
- A list of all persons who the applicant knows will be employed in the district with all the required employee information.

The applicant for the district permit must have a place of business at the port

[1] *See* 19 CFR part 111.

[2] Source: Discussions with the CBP Broker Management Branch on 3/15/2017.

[3] Customs districts are not evenly divided amongst the seven customs regions (one region may have more or fewer customs districts than another).

[4] In addition to the 40 geographically defined customs districts, there are three special districts that are responsible for specific types of imported merchandise. According to the Broker Management Branch, these special districts include districts 60, 70 and 80. District 60 refers to entries made by vessels under their own power. District 70 refers to shipments with a value under $800. District 80 refers to mail shipments. These three special districts do not require the use of a licensed broker with a specific district permit and as a result are not affected by this provision.

[5] 19 CFR 24.22(h). The user fee is subject to adjustment based on inflation. Proposed amendments to the regulatory provisions regarding the district permit user fee are found in the companion Department of the Treasury NPRM entitled. *See* ''Removal of References to Customs Broker District Permit Fee'' RIN 1515–AE43.

[6] User fees are addressed in ''Removal of References to Customs Broker District Permit Fee'' RIN 1515–AE43.

where the application is filed, or must have made firm arrangements satisfactory to the port director to establish a place of business, and must exercise responsible supervision and control of that place of business once the permit is granted. Instead of a customs broker getting multiple district permits, he or she could also apply for a national permit for the purpose of transacting customs business in all districts within the customs territory of the United States as defined in 19 CFR part 101. The national permit application may be submitted concurrently with or after the submission of an application for a broker's license.

CBP first introduced national permits in 2000 to allow a broker to conduct a limited set of activities in districts for which the broker does not have a district permit. When it was first introduced, a national permit allowed licensed brokers to place an employee in the facility of a client for whom the broker is conducting customs business; file electronic drawback claims; participate in remote location filing; and make representations after the entry summary has been accepted. In the years since the national permit was introduced, and with the full implementation of ACE, almost every activity performed under a district permit was added to the national permit. Only those activities, such as the filing of paper entries and certain payment submissions, that require physical presence at a port currently require a district permit instead of a national permit. With the national permit system, these restrictions will no longer apply. This proposed rule will allow a national permit holder to conduct any type of customs business in all districts within the customs territory of the United States. This represents a full expansion of the activities allowed under a national permit. CBP has determined that in the increasingly automated environment brokers may need to make contact with CBP personnel across the customs territory and there is no longer a reason to restrict national permit holders.

Currently, an application for a national permit must be in the form of a letter submitted to the director of the designated Center, and include the following:

- The applicant's broker license number and date of issuance;
- If the applicant is a partnership, association, or corporation, the name and title of the national permit qualifier;
- The address, telephone number, and email address of the office designated by the applicant as the broker's office of record; that office will be noted in the national permit when issued;
- A copy of a document which reserves the applicant's business name with the State or local government;
- The name, telephone number, and email address of the licensed broker or knowledgeable employee to be available to CBP to respond to issues related to the transaction of customs business;
- The name, broker license number (if designated), office address, telephone number, and email address of each individual broker who will exercise responsible supervision and control over the customs business of the applicant under the national permit;
- A supervision plan describing how the broker will exercise responsible supervision and control, including compliance with § 111.28 (*see* 19 CFR 111.28);
- The place where the applicant's brokerage records relating to customs business conducted under the national permit will be retained and the name of the applicant's designated recordkeeping contact (*see* 19 CFR 111.22 and 111.23);
- The name, telephone number, and email address of the knowledgeable employee responsible for broker-wide records maintenance and financial recordkeeping requirements;
- A list of all employees of the broker, together with the specific employee information prescribed in § 111.28(b) for each of those employees (19 CFR 111.28(b)); and
- A receipt or other evidence showing that the fees specified in § 111.96(b) and (c) have been paid (19 CFR 111.96(b) and (c)).

In an effort to modernize the permitting process for customs brokers, this proposed rule would eliminate the district permitting process and automatically grant each current district permit holder a national permit. Upon adoption of a final rule, CBP will provide guidance to those brokers with only a district permit(s) explaining the process to transition their district permit(s) to a national permit. Currently, customs brokers who do not have a national permit must maintain an office and have a separate district permit for each district in which the broker wants to conduct customs business. For some brokers, this means having many small offices across the country. This rule removes the requirement to have a separate local office in each district in which customs brokers do business. Since, under a national permitting structure, customs brokers are no longer required to have a representative in each district in which they conduct customs business, brokers could organize themselves to better suit their specific business needs.

Furthermore, brokers that currently only hold active district permits will be granted a national permit at no cost. Upon adoption of a final rule, CBP will provide guidance to those brokers with only a district permit(s) explaining the process to transition their district permit(s) to a national permit. According to CBP's Broker Management Branch, the customs brokers that will be transitioned to national permits represent 6 percent of active brokers. The remainder either have no permit at all or already have a national permit.

Projection of Customs Broker Licenses and Permits

CBP's Broker Management Branch provided historical data from 2011–2016, the full range of quality data available, The 2,093 permitted brokers hold a combined total of 3,067 active district permits.[7] This is an average of approximately 1.5 district permits per district permit holder. Using this figure, we can project how many district permits would have been held by licensed brokers over the period of the analysis, from 2017 through 2021 under the baseline condition (*i.e.,* if this rule is not promulgated). This is shown in Exhibit 2 below.

[7] 1,258 brokers who hold at least 1 district permit concurrently hold a national permit. Additionally, 13 licensed brokers hold a national permit without holding any district permits and are unaffected by this rule.

EXHIBIT 2—PROJECTION OF NEW INDIVIDUAL AND CORPORATE PERMITS

Year	New individual licenses issued (10% annual growth rate)	New individual permits (13% of new individual licenses × 1.5)	New corporate licenses issued (9% annual growth rate)	New corporate permits (100% of new corporate licenses × 1.5)
2017	762	149	97	146
2018	839	164	106	159
2019	922	180	115	173
2020	1,015	198	126	188
2021	1,116	218	137	205
Total	4,654	908	581	871

Note: Values may not sum to total due to rounding.

3. Proposed Rule Amendments: Costs, Benefits, and Transfer Payments

In this proposed rule, CBP is proposing regulatory changes that include: Increasing fees for the customs broker license application; eliminating district permits so each customs broker only needs one national permit to conduct customs business; mandating that each broker must provide notification to CBP of any known breach of records within 72 hours of discovery; requiring that upon request by CBP to examine records, brokers make all records available to CBP within thirty (30) calendar days at the location specified by CBP; requiring that customs brokers obtain a customs power of attorney directly from the importer of record or drawback claimant, not a freight forwarder, to transact customs business for that importer or drawback claimant; and requiring that a broker document and report to CBP when the broker separates from or cancels a client as a result of the broker's determining that the client is intentionally attempting to use the services of the broker to defraud or otherwise commit any criminal act against the U.S. Government. Finally, this rule would allow CBP to make numerous non-substantive changes and conforming edits in an effort to modernize the regulations governing customs brokers and to clarify existing language in the regulations to better reflect what is already occurring. We will now explore the costs, benefits, and payment transfers of each provision separately.

3.1 Broker License Fee

Currently CBP charges $200 fees per individual or business entity for the broker license application. These fees are used to offset the costs associated with servicing the brokers. Based on a fee study, entitled ''Customs Broker License Application Fee Study,'' CBP has determined that these fees are no longer sufficient to cover its costs.[8]

The study found that fees of $463 and $815 are necessary to recover the costs associated with reviewing the customs broker license application for individuals and business entities, respectively. These fees, however, are significantly higher than the current fees and, if implemented, these fee rates could become an economic disincentive to those pursuing a career as a customs broker. Therefore, in an effort to minimize the financial burden to prospective customs brokers while also recovering a larger portion of the costs associated with reviewing and vetting the license application, CBP has decided to limit the increase of the license application fee to $300 for individuals and $500 for business entities; the remainder of the costs would continue to be covered by appropriated funds. Although these fee increases represent an increased expense for prospective customs brokers, these fee increases do not increase overall costs to society as these costs are already being paid by CBP's appropriated funds.

When assessing costs of proposed rules, agencies must take care to not include transfer payments in their cost analysis. As described in OMB Circular A–4, transfer payments occur when ''. . . monetary payments from one group [are made] to another [group] that do not affect total resources available to society.'' Examples of transfer payments include payments for insurance and fees paid to a government agency for services that an agency already provides. CBP's processing of the customs broker license application is an established service that already requires a fee payment. As such, the fee associated with each service is considered a transfer payment. Currently, the shortfall in funding not covered by fees is covered by funds appropriated by CBP. The proposed increased fees paid by brokers would replace appropriated funds. CBP recognizes that the proposed fee changes may have a distributional impact on prospective customs brokers. In order to inform stakeholders of all potential effects of the proposed rule, CBP has analyzed the distributional effects of the proposed rule in section ''3.15 Distributional Impacts.''

3.2 Permit Application Fee

Currently brokers are required to pay a $100 permit application fee in connection with each permit application by either an individual or corporation. The applicant has the option of concurrently receiving its first district permit with its customs broker's license and therefore forgoing the $100 permit application fee for its first district permit. However, some brokers do not request an initial district permit at the time they get their license. When this is the case and the broker later applies for a district permit, or if brokers make a request to obtain a permit for additional districts, then they must submit the following information to CBP as set forth in 19 CFR 111.19(b):

(1) The applicant's broker license number and date of issuance;

(2) The address where the applicant's office will be located within the district and the telephone number of that office;

(3) A copy of a document which reserves the applicant's business name with the state or local government;

(4) The name of the individual broker who will exercise responsible supervision and control over the customs business transacted in the district;

(5) A list of all other districts for which the applicant has a permit to transact customs business;

(6) The place where the applicant's brokerage records will be retained and

[8] The fee study is included in the docket of this rulemaking (docket number USCBP–2020–0009).

the name of the applicant's designated recordkeeping contact; and

(7) A list of all persons who the applicant knows will be employed in the district, together with the specific employee information for each of those prospective employees.

As a result of this rule, the options above pertaining to district permits will no longer exist and all brokers will have to get a single national permit to conduct customs business.

As shown in Exhibit 2 above, absent this proposed rule there would be 5,235 total (4,654 individual + 581 corporate) new broker licenses issued over the period of analysis from 2017 through 2021. Of these 5,235 licenses, 581 would be issued to corporations which would result in 871 corporate district permits (as mentioned above, each customs broker permit holder currently has 1.5 district permits on average). Additionally, as mentioned above, 100 percent of corporations exercise the option of concurrently receiving their first district permit with their customs broker's license, therefore saving the $100 permit application fee for their first district permit. This means that, absent this rule, corporations would get 581 permits for free and would then have to pay for the remaining 290 permits for a cost of $29,000 ($100 permit application fee * 290 corporate permits). As a result of this rule, these 581 corporate brokers will each have to get a single national permit and pay the $100 permit application fee for each national permit for a total cost of $58,100 (581 national permits * $100 permit application fee). This results in an additional cost to these corporate brokers of $29,100 ($58,100 − $29,000) over the period of the analysis from 2017 through 2021. Please see Exhibit 3 below for a breakdown of these costs.

EXHIBIT 3—COSTS FOR CORPORATE PERMIT HOLDERS OVER THE PERIOD OF ANALYSIS ($2018)

Year	Number of new corporate broker licenses issued	Number of permits issued	Costs for corporate brokers without rule ($)	Costs for corporate brokers with rule ($)	Rule's cost for corporate brokers ($)
2017	97	146	4,900	9,700	4,900
2018	106	159	5,300	10,600	5,300
2019	115	173	5,800	11,500	5,800
2020	126	188	6,300	12,600	6,300
2021	137	205	6,800	13,700	6,800
Total	581	871	29,000	58,100	29,100

Note: Values may not sum to total due to rounding.

As shown above in Exhibit 2, if this rule were not in effect there would be 4,654 new individual broker licenses resulting in 908 new individual permits over the period of analysis. According to CBP's Broker Management Branch, individual brokers do not get their first district permit issued concurrently with their customs broker's licenses nearly as often as corporations. Approximately two (2) percent of individual customs broker license holders, or 93 of the estimated 4,654 new brokers, get their first district permit issued concurrently with their broker's license, saving the $100 permit application fee charged for the first district permit. Using the average of 1.5 district permits per customs broker permit holder, we estimate that these 93 individual customs brokers would get 140 district permits over the period of the analysis if this rule did not go into effect. Since, absent this rule, the brokers would get 93 out of the 140 permits for free, brokers would have to pay for the remaining 47 permits for a cost of $4,700 ($100 permit application fee * 47 permits). Under this proposed rule, these 93 individual brokers would each need a single national permit for a total of 93 permits resulting in a total cost of $9,300 ($100 national permit application fee * 93 national permits). As a result of this rule, this two (2) percent of individual brokers will bear an additional total cost of $4,600 ($9,300 − $4,700) over the period of analysis. Please see Exhibit 4 below for a breakdown of these costs.

EXHIBIT 4—COSTS FOR THE TWO (2) PERCENT OF INDIVIDUAL PERMIT HOLDERS OVER THE PERIOD OF ANALYSIS ($2018)

Year	Number of individual licenses issued for the 2% of permit holders	Number of permits issued	Costs for 2% of individual brokers without rule ($)	Costs for 2% individual brokers with rule ($)	Rule's costs for 2% of individual brokers ($)
2017	15	23	800	1,500	800
2018	17	25	800	1,700	800
2019	18	28	1,000	1,800	900
2020	20	30	1,000	2,000	1,000
2021	23	33	1,100	2,200	1,100
Total	93	140	4,700	9,300	4,600

Note: Values may not sum to total due to rounding.

The remaining 98 percent of individual customs broker permit holders do not get their first district permit concurrently with their broker's license, if they get any permits at all. Of the 13,624 active licensed brokers,

approximately 15 percent hold at least one permit. Because 2 percent of those are corporate license holders and only 2 percent of individuals get a permit concurrently with their license, about 11 percent of licensed brokers apply for and receive a permit after their license is issued. Under the current permit system, using an average of 1.5 permits per broker, 512 individual customs broker permit holders pay $76,800 for 768 permits, because they pay the $100 fee for every permit. With the national permit system, these brokers would pay $51,200 for 512 national permits, resulting in a savings of $25,600. Please see Exhibit 5 below for an itemization of these costs.

EXHIBIT 5—COSTS SAVINGS FOR THE 98 PERCENT OF INDIVIDUAL PERMIT HOLDERS OVER THE PERIOD OF ANALYSIS ($2018)

Year	Number of individual licenses issued for the 11% of permit holders	Number of permits issued	Costs for 11% of individual brokers without rule ($)	Costs for 11% of individual brokers with rule ($)	Rule's cost savings for 11% of individual brokers ($)
2017	84	126	12,600	8,400 10900	4,200
2018	92	138	13,800	9,200	4,600
2019	101	152	15,200	10,100	5,100
2020	112	167	16,800	11,200	5,600
2021	123	184	18,400	12,300	6,100
Total	512	768	76,800	51,200	25,600

Note: Values may not sum to total due to rounding.

Any brokers who apply for more than one permit will experience a time savings as a result of this rule because they will only need to apply for a single permit. Currently brokers spend approximately three hours to collect and submit the appropriate documentation to CBP.[9] The rule's elimination of these applications will result in time savings for the brokers as well as CBP. The estimated number of permits requested separately from individual licenses for the entire period of the analysis is taken from Exhibit 4 and Exhibit 5. Exhibit 4 implies there are 47 permits for which 2% of individual customs brokers currently pay $100 ($4,700 permit costs without rule/$100 per permit). Exhibit 5 explicitly shows that 11% of individual customs brokers currently pay $100 for 768 permits. Summing these two figures, we find that all individual customs brokers will pay $100 for 814 permits. Exhibit 6 shows the removal of the application for these permits will result in a monetized time savings worth $75,200. This cost savings is based on CBP's estimated fully-loaded hourly time value for customs brokers of $30.79.[10]

EXHIBIT 6—TIME SAVINGS MONETIZED FOR BROKER DISTRICT PERMIT APPLICATIONS SEPARATE FROM LICENSE APPLICATIONS OVER THE PERIOD OF ANALYSIS ($2018)

Year	Number of permits issued separate from license	Hourly time-burden for permit application	Rule's cost savings for individual brokers
2017	133	3	$12,300
2018	147	3	13,600
2019	161	3	14,900
2020	178	3	16,400
2021	195	3	18,000
Total	814	3	75,200

Note: Values may not sum to total due to rounding.

Relatedly, CBP would see cost savings due to the elimination of the district permit application review process. CBP estimates that it takes two hours of CBP processing, including time to review and approve an application and create

[9] Source: Email correspondence with the CBP Broker Management Branch on May 16, 2019.

[10] CBP bases the $30.79 hourly time value for customs brokers on the Bureau of Labor Statistics' (BLS) 2018 median hourly wage rate for Cargo and Freight Agents ($20.77), which CBP assumes best represents the wage for brokers, by the ratio of BLS' average 2018 total compensation to wages and salaries for Office and Administrative Support occupations (1.4801), the assumed occupational group for brokers, to account for non-salary employee benefits, and rounded. Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, ''May 2018 National Occupational Employment and Wage Estimates, United States—Median Hourly Wage by Occupation Code: 43–5011.'' Updated April 2, 2019. Available at *https://www.bls.gov/oes/2018/may/oes_nat.htm.* Accessed November 20, 2019. The total compensation to wages and salaries ratio is equal to the calculated average of the 2018 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Office and Administrative Support occupations divided by the calculated average of the 2018 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category. Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. Employer Costs for Employee Compensation Historical Listing March 2004–December 2018, ''Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004–2018 by Respondent Type: Office and administrative support occupations.'' Available at *https://www.bls.gov/web/ecec/ececqrtn.pdf.* Accessed June 4, 2019.

and deliver the permit to the applicant.[11] Exhibit 7 shows CBP's total estimated cost savings of $143,200 over the period of analysis. This is based on a CBP fully loaded wage rate of $87.94 [12] for CBP staff reviewing applications.

EXHIBIT 7—TIME SAVINGS MONETIZED FOR CBPOS REVIEWING DISTRICT PERMIT APPLICATIONS OVER THE PERIOD OF ANALYSIS ($2018)

Year	Number of permits issued separate from license	Hourly time-burden for permit application review	Rule's cost savings for CBP
2017	133	2	$23,500
2018	147	2	25,800
2019	161	2	28,400
2020	178	2	31,200
2021	195	2	34,400
Total	814	2	143,200

Lastly, the district permit waiver described in current § 111.19(d)(2) would be eliminated with the rule. Currently requests for a district permit waiver must be submitted to the port director and include a description of responsible supervision and control procedures and information on the volume and type of customs business conducted. The port director reviews the request and makes a recommendation to headquarters. Headquarters reviews and issues the decision.[13] According to the CBP Broker Management Branch this process takes two hours for brokers, including application processing and mailing paper documents to CBP. It takes an hour and a half for CBP to do the waiver analysis, prepare the recommendation memorandum, and for headquarters to make the final decision.[14] As shown in Exhibits 8 and 9 there is a total cost savings of $5,031 ($1,601 + $3,430), as this entire process is eliminated under the national permit framework. Waiver estimates for calendar years 2019 to 2021 are based on compound annual growth rate from calendar years 2017 and 2018.

EXHIBIT 8—TIME SAVINGS MONETIZED FOR APPLICANTS REQUESTING DISTRICT PERMIT WAIVERS OVER THE PERIOD OF ANALYSIS ($2018)

Year	Number of broker district permit waivers	Hourly time-burden for waiver application	Rule's cost-savings for brokers requesting waivers
2017	17	2	$1,047
2018	6	2	369
2019	2	2	123
2020	1	2	62
2021	0	2	0
Total	26	2	1,601

EXHIBIT 9—TIME SAVINGS MONETIZED FOR CBPOS REVIEWING DISTRICT PERMIT WAIVER APPLICATIONS OVER THE PERIOD OF ANALYSIS ($2018)

Year	Number of broker district permit waivers	Hourly time-burden for waiver application review	Rule's cost-savings for CBP
2017	17	1.5	$2,243
2018	6	1.5	791
2019	2	1.5	264
2020	1	1.5	132
2021	0	1.5	0
Total	26	1.5	3,430

[11] Source: Email correspondence with the CBP Broker Management Branch on May 16, 2019.

[12] CBP bases the $87.94 hourly time value for CBP staff on a median annual loaded wage rate, including salary and benefits, of $139,034. Dividing by 2080 work hours per year gives a median hourly wage of $66.84. CBP then adds premium pay and non-salary costs for a median, fully-loaded hourly wage rate of $87.94. Source of salary and benefit information: Email correspondence with the U.S. Customs and Border Protection, Office of Finance on June 12, 2019.

[13] *See* 19 CFR 111.19(d)(2).

[14] Source: Email correspondence with the CBP Broker Management Branch on May 16, 2019.

Exhibit 10 provides a summary of the costs and cost-savings pertaining to the removal of the district permit application and $100 fee over the period of analysis. Note that a negative number indicates a savings and a positive number indicates a cost.

EXHIBIT 10—COSTS AND COST-SAVINGS WITH REMOVAL OF DISTRICT PERMITS FOR CY2017–2021 ($2018)

	Costs/ savings for individuals			Costs/ savings for corporations		Savings for CBP	
	Savings for 11%	Costs for the 2%	Time savings	Costs for corporation	Time savings	Review of permits	Review waivers
2017	−$4,200	$800	−$12,300	$4,900	−$1,000	−$23,500	−$2,200
2018	−$4,600	$800	−$13,600	$5,300	−$400	−$25,800	−$800
2019	−$5,100	$900	−$14,900	$5,800	−$100	−$28,400	−$300
2020	−$5,600	$1,000	−$16,400	$6,300	−100	−$31,200	−100
2021	−$6,100	$1,100	−$18,000	$6,800	$0	−$34,400	$0
Total	−$25,600	$4,600	−$75,200	$29,000	−$1600	−$143,200	−$3,400
Net Cost	−$96,200			$27,500		−$146,700	

3.3 Record of Transactions

Each broker must keep current, in a correct and itemized manner, records of accounts reflecting all his or her financial transactions as a broker. The broker must keep and maintain on file copies of all correspondence and other records relating to customs business. With this proposed rule, each broker must provide notification to the designated Center of any known breach of electronic or physical records relating to customs business. Notification to CBP must be provided within 72 hours of the discovery of the breach with a list of all known compromised importer identification numbers. Brokers already compile this information through their normal course of business and they can report the information to CBP in any format they choose. CBP assumes data breaches are rare, but includes this requirement as a preventive measure. CBP assumes this provision has virtually no cost to the brokers due to the infrequency of data breaches. CBP will use this information in its targeting of imports for inspection, which will help make imports safer.

3.4 Records Availability

Currently, during the period of retention (5 years after the date of entry), the broker must maintain its records in such a manner that they can be readily examined by CBP when necessary. Records required to be maintained under this provision must be made available upon reasonable notice for inspection, copying, reproduction or other official use by representatives of the Department of Homeland Security. Additionally, customs brokers currently have the option to store records offsite. Under the proposed rule, upon request by CBP to examine records, the designated recordkeeping contact must make all records available to CBP within thirty (30) calendar days, or any longer timeframe as specified by CBP, at the location specified by CBP. We are making this change in the regulations to make sure brokers continue to give CBP the requested information and to specifically state for clarity that brokers need to keep records in the United States. As we are only explicitly stating an existing requirement for the sake of clarity, this will result in no additional burden for customs brokers.

3.5 Termination of Client Relationship

In this proposed rule, we will now require that a broker document and report to CBP when it separates from a client relationship as a result of the broker's determining that the client is intentionally attempting to use the broker's services to defraud or otherwise commit any criminal act against the U.S. Government. This is an entirely new provision, so we do not have data on how often clients may use a broker's services to defraud or otherwise commit criminal acts against the U.S. Government. However, we do not expect this to happen often based on stakeholder feedback. CBP's Broker Management Branch estimates this to occur approximately 5 times per year and each resulting report will take brokers approximately four (4) hours to draft. CBP requests comment on these estimates.

To estimate the time cost spent writing and submitting this report to CBP, we must first determine a value of time for the individuals who would be preparing and submitting this report. We expect that, in most cases, this information will be submitted by customs brokers employing attorneys to draft the report. According to the U.S. Bureau of Labor Statistics, the 2018 median hourly earnings of an attorney is $145.33.[15] These five (5) reports represent an additional burden to the broker and will result in a total annual cost of $2,907 (4 hours per report * 5 reports * $145.33 annual wage rate for an attorney) or a total cost of $14,533 over the period of analysis from 2017–2021.

3.6 Customs Power of Attorney

A customs broker is required to have a customs power of attorney (POA) prior to transacting any customs business on behalf of the importer of record. (*See* 19 CFR 141.46). Currently, an agent of the importer of record (IOR), which could be a freight forwarder that is properly designated by the IOR, may issue a POA on behalf of the IOR to a customs broker. In such instances, the customs

[15] CBP bases the $145.33 hourly time value on the median hourly wage rate for lawyers, SOC 23–1011, ($58.13) multiplied by 2.5 to account for benefits and other costs of employment. Source: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, ''May 2018 National Occupational Employment and Wage Estimates, United States—Median Hourly Wage by Occupation Code.'' Updated April 2, 2019. Available at *http://www.bls.gov/oes/2018/may/oes_nat.htm.* Accessed June 4, 2019.

The DHS ICE ''Safe-Harbor Procedures for Employers Who Receive a No-Match Letter'' used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule. We believe the explanation and methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, see page G–4 [Aug. 25, 2008] [*http://www.regulations.gov/#!documentDetail;D=ICEB-2006-0004-0922*]. Additionally, this methodology was also utilized in the analysis for the DHS USCIS final rule establishing a registration fee requirement for petitioners seeking to file H–1B petitions on behalf of cap subject aliens. See 84 FR 60307 (November 8, 2019).

broker may never have any contact with the IOR, only its agent (the forwarder). With this proposed rule, the broker must get a customs POA directly from the importer of record or drawback claimant and not via the freight forwarder or any other third party agent. This gives the broker direct access to the IOR when entering into the POA, which increases transparency in the verification process. According to CBP's Broker Management Branch, it takes approximately 1.75 hours for the broker to get a customs POA from the freight forwarder. This time estimate will not change once the intermediary is removed and the broker must get the customs POA directly from the importer of record or drawback claimant, instead of allowing a freight forwarder or other third-party to do so on their behalf. Since brokers are currently required to get a customs POA, and importers already provide a POA, this provision would not result in any additional burden to brokers. The new provision only requires direct contact between the broker and the IOR.

3.7 Professionalism

We are making a number of changes in an effort to increase professionalism and clarify what brokers should already be doing. We recognized this need as we routinely field questions about these topics and we wanted to clarify best practices for the trade. The next several sections describe the current process, and what is changing as a result of this rule, for new requirements related to Customs Business, Records Confidentiality, Responsible Supervision and Control, and Advice to Client.

3.8 Customs Business

Currently, customs business must be conducted within the customs territory of the United States as it is defined in § 101.1 of the CBP regulations. Furthermore, each broker must designate a licensed broker or knowledgeable employee to be available to CBP to respond to issues related to the transacting of customs business and each broker must maintain accurate and current point of contact information in a CBP-authorized electronic data interchange (EDI) system. Under this proposed rule, these requirements are not changing; we are just now putting the language in the regulations requiring a specific point of contact be maintained in an EDI. CBP gets questions on this provision from the public, so adding this additional language to the regulation would clarify the provision for the public. There are no costs to this provision because it does not change the requirement. The public would benefit as the public now has more clarity regarding the requirement without needing to contact CBP.

3.9 Records Confidentiality

Currently, records pertaining to the clients of the broker are to be considered confidential and the broker must not disclose their contents or any information connected with the records to any other persons except the relevant surety, other than specifically described Government representatives with regard to a particular entry or due to a subpoena. This is not changing under the proposed rule. However, this description is being clarified to now state that these records may not be disclosed to any persons other than the ones mentioned above and to the representatives of the Department of Homeland Security except by court order, subpoena (as mentioned above), or when authorized in writing by the client. This has already been the practice, but has been the subject of confusion so we are providing needed clarification. Finally, the revised language clarifies that the confidentiality provision does not apply to information that is in the public domain, which has been a point of confusion for some brokers.

3.10 Responsible Supervision and Control

Brokers often have employees working for them who are not licensed brokers. These employees help with information collection and submission of entry documentation to CBP. Each broker is responsible for exercising responsible supervision and control over the transaction of the customs business done under its broker license. This requirement is in existence currently and is not changing as a result of this rule. However, this rule proposes to move the list of factors CBP considers when determining whether a customs broker is exercising responsible supervision and control from the definition of ''responsible supervision and control'' in §§ 111.1 through 111.28. (19 CFR 111.1, 111.28). This list is of a substantive nature and is more appropriately located in the section on responsible supervision and control as opposed to the definitions section. CBP has always maintained that the current factors are not exhaustive and in the proposed rule, CBP is simply clarifying existing requirements that brokers, for the most part, are already complying with in practice.[16] This is not a change of practice as these factors for responsible supervision already exist and are just being moved and formally stated in the regulations to clarify what already should be occurring.

Additionally, CBP is clarifying some of the requirements on the reporting of employee information by brokers, for consistency. In this rule, CBP is proposing to remove the requirement for the broker to report each employee's last home address, email address, the name and address of each former employer, and if the employee had been employed by the broker for less than three years, the dates of employment for the three-year period preceding current employment with the broker. The rule retains the requirement that brokers report other information, including employee names, social security numbers, dates and places of birth, dates of hire, and current home addresses. An updated list must be submitted to the director of the designated Center and updated in ACE if any of the information required changes, including notation of new or terminated employees. This update must be submitted within thirty (30) calendar days of the change. However, brokers already have an up-to-date list of their employees' contact information. This new requirement amounts to a routine submission each month in ACE with data that the brokers already routinely keep. They are likely to do this at the same time as making their other filings or routine reports so submitting one more existing document is not an additional measureable burden on customs brokers.

3.11 Advice to Client

Currently, if a broker knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other record which the law requires the client to execute, the broker must advise the client promptly of that noncompliance, error, or omission. In the proposed rule we are adding that the broker must also advise the client on the proper corrective actions required and retain a record of the broker's communication with the client in accordance with § 111.23. (19 CFR 111.23). CBP proposes to add the requirement that the broker also explain the proper corrective action

[16] Brokers looking for more information beyond what is stated in CBP regulations can consult the CBP website at *https://www.cbp.gov/trade/programs-administration/customs-brokers*. The website is updated more frequently than the regulations themselves. CBP provides guides on how to become a broker, broker exam information, validating the power of attorney, broker compliance, employing convicted felons, fees, national permits, and triennial reports, as well as webinars and informed compliance publications.

to better advise the client and to clarify the level of professionalism that is expected in the broker/importer relationship. Additionally, we are adding that the record of this communication could be reviewed by CBP on a routine visit to the broker. Brokers will not have to report any errors or omissions but in the case that an error or omission is discovered, this would help a broker show that it advised the client on how to correct the situation. Most brokers are already in compliance with this requirement, so this provision will not add a significant burden to customs brokers.

3.12 Total Costs

The total monetized costs for customs brokers include a $100 fee that two (2) percent of individual customs brokers who receive their first district permit concurrently with their broker's license will need to pay for their permit and the costs resulting from the new requirement that a broker document and report to CBP when it separates from a client relationship as a result of attempted fraud or criminal acts. Exhibit 11 shows the total annual cost of the rule. Over the 5-year period of analysis, this rule will cost brokers about $48,200 undiscounted.

EXHIBIT 11—TOTAL ANNUAL UNDISCOUNTED COSTS FOR BROKERS ($2018), 2017–2021

Year	Total costs
2017	$8,500
2018	9,000
2019	9,600
2020	10,200
2021	10,900
Total	48,200

Note: Values may not sum to total due to rounding.

Exhibit 12 shows the present value and annualized costs of the rule over the period of analysis (2017–2021) at a three (3) and seven (7) percent discount rate. Total costs range from $39,200 to $44,000, depending on the discount rate used. Annualized costs are about $9,600.

EXHIBIT 12—TOTAL PRESENT VALUE AND ANNUALIZED COSTS, FROM 2017–2021 ($2018)

Total present value costs		Annualized costs	
3%	7%	3%	7%
$44,000	$39,200	$9,600	$9,600

3.13 Total Benefits

The total annual monetized cost savings for customs brokers are the result of monetary savings from switching from a district permitting system to a national permitting system. Namely, there is a time savings and fee savings of $100 per permit application for individual customs brokers who do not concurrently receive their first district permit with their broker license. There is also a time savings to CBP due to the removal of the district permit waiver application reviews. As shown in Exhibit 13, total undiscounted savings over the period of analysis is $249,100. In addition to these quantified benefits, there are unquantified benefits resulting from this rules' updates. These benefits include increased professionalism of the broker industry, greater clarity for brokers in understanding the rules and regulations by which they must abide, greater data security, and better reporting of potential fraud to CBP.

EXHIBIT 13—TOTAL ANNUAL UNDISCOUNTED COSTS-SAVINGS FOR BROKERS AND CBP ($2018), 2017–2021

Year	Total costs-savings
2017	$43,300
2018	45,100
2019	48,800
2020	53,400
2021	58,500
Total	249,100

Note: Values may not sum to total due to rounding.

Exhibit 14 shows the present value and annualized costs-savings of the rule over the period of analysis (2017–2021) at a three (3) and seven (7) percent discount rate. Total costs-savings range from $202,100 to $227,100, depending on the discount rate used. Annualized costs-savings range from $49,301 to $49,592, depending on the discount rate used.

EXHIBIT 14—TOTAL PRESENT VALUE AND ANNUALIZED COSTS-SAVINGS, FROM 2017–2021 ($2018)

Total present value costs-savings		Annualized costs-savings	
3%	7%	3%	7%
$227,100	$202,100	$49,592	$49,301

3.14 Net Benefits

Exhibit 15 summarizes the monetized costs and benefits of this rule to individual and business entity customs brokers. As shown, the total monetized present value net benefits of this rule over a 5 year period of analysis from 2017–2021 ranges from $163,000 to $183,100 and the annualized net benefit is approximately $40,000. In 2017, we estimate that 859 brokers will receive their broker licenses (762 individual licenses plus 97 corporate licenses). The adoption of this rule will result in an average annual net benefit per broker in

2017 of $47 ($40,000 annualized net benefits/859 total new brokers for 2017).

EXHIBIT 15—PRESENT VALUE AND ANNUALIZED NET BENEFIT OF RULE ($2018), 2017–2021

	3% discount rate		7% discount rate	
	Present value	Annualized	Present value	Annualized
Total Cost	$44,000	$9,600	$39,200	$9,600
Total Benefit	227,100	49,600	202,100	49,300
Total Net Benefit	183,100	40,000	163,000	39,700

3.15 Distributional Impact

Under the proposed rule, the customs broker license application will change from $200 for both individuals and business entities to $300 for individuals and $500 for business entities. Consequently, CBP's proposed fee would increase by $100 for individuals and $300 for business entities. As discussed in section 2, CBP estimates that over the next five years, 4,654 individuals and 581 business entities will be issued a new customs broker license. Using these estimates and the proposed fee increases, CBP estimates that the proposal will result in an increased transfer payment from brokers to the government of approximately $639,700 over the next five years (4,654 individual applications * $100 proposed fee increase = $465,400; 581 business entity applications * $300 proposed fee increase = $174,300; $465,400 + $174,300 = $639,700). Although the proposed fee changes will increase costs for individuals and business entities, CBP has determined that these proposed increases are necessary in order to recover some of the costs of provide the services necessary to facilitate the customs broker license application process.

4. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business concern per the Small Business Act); a small organization (defined as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field; or a small governmental jurisdiction (defined as a locality with fewer than 50,000 people).

In an effort to modernize the regulations governing customs brokers, CBP is proposing regulatory changes that include: Eliminating district permits so each customs broker only needs one national permit, which reduces the fees owed; mandating that each broker must provide notification to CBP of any known breach of its records within 72 hours of discovery; requiring brokers to make all records available to CBP, upon request within thirty (30) calendar days at the location specified by CBP; mandating that customs brokers now obtain a customs power of attorney directly from the importer of record or drawback claimant, not a freight forwarder, to transact customs business for that importer or drawback claimant; and requiring that a broker must document and report to CBP when it separates from or terminates representation of a client as a result of the broker's determining the client is intentionally attempting to use the services of a broker to defraud or otherwise commit any criminal act against the U.S. Government. Furthermore, CBP is also proposing to make various non-substantive changes and conforming edits to clarify the existing language in the regulations to better reflect what is already occurring.

The proposed rule would apply to all customs brokers, regardless of size. Accordingly, the proposed rule would affect a substantial number of small entities. However, as stated above in the Executive Orders 13563, 12866, and 13771 section, the proposed rule would result in an average annualized savings per customs broker of $47. Additionally, as discussed above, the customs broker license application fee increase for the 5,235 new customs brokers over the period of analysis would result in a distributional impact of $639,700, with 4,654 individual applicants paying an additional $100 and 581 corporate applicants paying an additional $300 over a 5-year period. Including distributional impacts, the rule costs brokers either $61 or $261 per year, or less than 1 percent of annual revenue for brokers of any size. Please see Exhibit 16 for a breakdown of brokerages by size. Because the distributional impact and saving are relatively small on a per broker basis, this rule will not have a significant economic impact on customs brokers. Accordingly, CBP certifies that this rule does not have a significant economic impact on a substantial number of small entities.

EXHIBIT 16—ANNUAL REVENUE BY FIRM SIZE [17]

Annual revenue ($)	Number of firms	Small	Estimated number of permitted brokers
<100,000	2,195	Yes	323
100,000–499,999	4,935	Yes	727
500,000–999,999	2,330	Yes	343
1,000,000–2,499,999	2,429	Yes	358
2,500,000–4,999,999	1,208	Yes	178
5,000,000–7,499,999	540	Yes	80

[17] Source: U.S. Census Bureau, ''2012 SUSB Annual Data Tables by Establishment Industry,'' Data by Enterprise Receipt Size, NAICS 4885 Freight Transportation Arrangement, Last Revised July 30, 2019. *https://www.census.gov/data/tables/2012/econ/susb/2012-susb-annual.html.* Accessed January 14, 2020.

EXHIBIT 16—ANNUAL REVENUE BY FIRM SIZE [17]—Continued

Annual revenue ($)	Number of firms	Small	Estimated number of permitted brokers
7,500,000–9,999,999	284	Yes	42
10,000,000–14,999,999	282	Yes	42
>15,000,000	815	No	0
Total	15,018		2,093

5. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. The collections of information contained in these regulations are provided for by OMB control number 1651–0034 (CBP Regulations Pertaining to Customs Brokers) and by OMB control number 1651–0076 (Recordkeeping Requirements). This rule does not change the burden under these information collections.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(b)(1), which provides that the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury for when the subject matter is not listed as provided by Treasury Department Order No. 100–16. Accordingly, this proposed rule to amend such regulations may be signed by the Secretary of Homeland Security (or his or her delegate).

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Harbors, Reporting and recordkeeping requirements, Taxes.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, parts 24 and 111 of title 19 of the Code of Federal Regulations (19 CFR parts 24 and 111) are proposed to be amended as set forth below.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The general authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

* * * * *

§ 24.1 [Amended]

■ 2. In § 24.1, paragraph (a)(3)(i) is amended by removing the phrases ''who does not have a permit for the district (see the definition of ''district'' at § 111.1 of this chapter) where the entry is filed,'' and ''which is unconditioned geographically'' from the third sentence.

PART 111—CUSTOMS BROKERS

■ 3. The authority citation for part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624; 1641.

Section 111.2 also issued under 19 U.S.C. 1484, 1498;

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

■ 4. In § 111.1:

■ a. Add the definition ''*Appropriate Executive Director, Office of Trade*'' in alphabetical order;

■ b. Remove the definition ''*Assistant Commissioner*'';

■ c. Add the definitions ''*Broker's office of record*'' and ''*Designated Center*'' in alphabetical order;

■ d. Remove the definition ''*District*'';

■ e. Add athe definition ''*Executive Assistant Commissioner*'';

■ f. Amend the definition of ''*Permit*'' by removing the word ''any'' and adding in its place the word ''a'';

■ g. Remove the definition ''*Region*'';

■ h. Revise the definition ''*Responsible supervision and control*''; and

■ i. Designate the definition ''*Department of Homeland Security or any representative of the Department of Homeland Security*'' in alphabetical order.

The additions and revisions read as follows:

§ 111.1 Definitions.

* * * * *

Appropriate Executive Director, Office of Trade. ''Appropriate Executive Director, Office of Trade'' means the Executive Director responsible for broker management.

* * * * *

Broker's office of record. ''Broker's office of record'' means the office designated by a customs broker as the broker's primary location that oversees the administration of the provisions of this part regarding all activities conducted under a national permit.

* * * * *

Designated Center. ''Designated Center'' means the Center of Excellence and Expertise (Center) through which an individual, partnership, association, or corporation submits an application for a broker's license under § 111.12(a), or to which an already-licensed broker is otherwise assigned.

* * * * *

Executive Assistant Commissioner. ''Executive Assistant Commissioner'' means the Executive Assistant Commissioner of the Office of Trade at the Headquarters of U.S. Customs and Border Protection.

* * * * *

Responsible supervision and control. ''Responsible supervision and control'' means that degree of supervision and control necessary to ensure the proper transaction of the customs business of a broker, including actions necessary to ensure that an employee of a broker provides substantially the same quality of service in handling customs transactions that the broker is required to provide. *See* § 111.28 for a list of factors which CBP may consider when evaluating responsible supervision and control.

* * * * *

■ 5. In § 111.2:

■ a. Amend the section heading by removing the word ''district'';

■ b. Amend paragraph (a)(2)(ii)(A)(*1*) by removing ''the port director'' and

''Customs'' and adding in their place the term ''CBP'';

■ c. Amend paragraph (a)(2)(ii)(A)(*2*) by:

■ 1. Removing the word ''port'' and adding the words ''of the designated Center'' after the word ''director''; and

■ 2. Removing the last sentence.

■ d. Amend paragraph (a)(2)(ii)(B) by removing the word ''port'' wherever it appears and adding ''of the designated Center'' after the word ''director'' wherever it appears; and

■ e. Revise paragraph (b).

The revision reads as follows:

§ 111.2 License and permit required.

* * * * *

(b) *National permit.* A national permit issued to a broker under § 111.19 will constitute sufficient permit authority for the broker to conduct customs business within the customs territory of the United States as defined in § 101.1 of this chapter.

■ 6. Add § 111.3 to read as follows:

§ 111.3 Customs business.

(a) *Location.* Customs business must be conducted within the customs territory of the United States as defined in § 101.1 of this chapter.

(b) *Point of contact.* A licensed customs broker, or partnership, association, or corporation, conducting customs business under a national permit must designate a knowledgeable point of contact to be available to CBP during and outside of normal operating hours to respond to customs business issues. The licensed customs broker, or partnership, association, or corporation, must maintain accurate and current point of contact information in a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, then the information must be provided in writing to the director of the designated Center.

■ 7. In § 111.12:

■ a. Paragraph (a) is revised;

■ b. Paragraph (b) is removed; and

■ c. Redesignate paragraph (c) as paragraph (b);

■ d. In newly redesignated paragraph (b):

■ 1. Remove the word ''port'';

■ 2. Add the words ''of the designated Center'' after the word ''director'' and;

■ 3. Remove the words ''$200 application fee'' and add in their place the words ''application fee set forth in § 111.96(a)''.

The revisions read as follows:

§ 111.12 Application for license.

(a) *Submission of application and fee.* An application for a broker's license must be timely submitted to the director of the Center identified by CBP after the applicant attains a passing grade on the examination. The application must be executed on CBP Form 3124. The application must be accompanied by the application fee prescribed in § 111.96(a) and one copy of the appropriate attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States, evidence of the applicant's authority to use the name in each of those States must accompany the application. An application for an individual license must be submitted within the 3-year period after the applicant took and passed the examination referred to in § 111.11(a)(4) and § 111.13. The Center director may require an individual applicant to provide a copy of the notification that the applicant passed the examination (*see* § 111.13(e)) and will require the applicant to submit fingerprints at the time of the interview. The Center director may reject an application as improperly filed if the application is incomplete or, if on its face, the application demonstrates that one or more of the basic requirements set forth in § 111.11 has not been met at the time of filing; in either case the application and fee will be returned to the filer without further action.

* * * * *

§ 111.13 [Amended]

■ 8. In § 111.13:

■ a. Amend paragraph (b) by removing ''$390'';

■ b. Amend paragraph (c) by

■ 1. Removing the words ''an office in another district (*see* § 111.19(d)) and the permit for that additional district would be revoked by operation of law under the provisions of 19 U.S.C. 1641(c)(3) and § 111.45(b)'' and adding in their place the words ''the transaction of customs business''; and

■ 2. Removing ''$390'';

■ c. Amend paragraph (d) by removing ''$390'';

■ d. Amend paragraph (e) by adding the words ''or electronic'' after the word ''written''; and

■ e. Amend paragraph (f) by:

■ 1. Adding the words ''or electronic'' between the words ''written'' and ''appeal'' and between the words ''written'' and ''notice'' in the first sentence;

■ 2. Adding the words ''or electronic'' between the words ''written'' and ''notice'' in the second sentence; and

■ 3. Removing the word ''writing'' and adding in its place the words ''submitting a written or electronic request'' in the third sentence.

■ 4. Removing the words ''Executive Assistant Commissioner'' and adding in their place the words ''appropriate Executive Director'';

■ 9. In § 111.14:

■ a. Revise the section heading;.

■ b. Remove paragraph (a);

■ c. Redesignate paragraph (b) as paragraph (a) and revise the newly redesignated paragraph;

■ d. Redesginate paragraph (c) as paragraph (b) and revise the newly redesignated paragraph; and

■ e. Redesignate paragraph (d) as paragraph (c) and revise the newly redesignated paragraph.

The revisions read as follows:

§ 111.14 Background investigation of the license applicant.

(a) *Scope of background investigation.* A background investigation under this section will ascertain facts relevant to the question of whether the applicant is qualified and will cover, but need not be limited to:

(1) The accuracy of the statements made in the application and interview;

(2) The business integrity and financial responsibility of the applicant; and

(3) When the applicant is an individual (including a member or a partnership or an officer of an association or corporation), the character and reputation of the applicant, including any association with any individuals or groups that may present a risk to the security or to the revenue collection of the United States.

(b) *Referral to Headquarters.* The director of the designated Center will forward the application and supporting documentation to the appropriate Executive Director Office of Trade. The Center director will also submit his or her recommendation for action on the application.

(c) *Additional inquiry.* The appropriate Executive Director, Office of Trade, may require further inquiry if additional facts are deemed necessary to evaluate the application. The appropriate Executive Director, Office of Trade, may also require the applicant (or in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person or by another approved method before the appropriate Executive Director, Office of Trade, or his or her representatives for the purpose of undergoing further written or oral inquiry.

■ 10. Revise § 111.15 to read as follows.

§ 111.15 Issuance of license.

If the appropriate Executive Director, Office of Trade, finds that the applicant is qualified and has paid all applicable fees prescribed in § 111.96(a), the Executive Assistant Commissioner will issue a license. A license for an individual who is a member of a partnership or an officer of an association or corporation will be issued in the name of the individual licensee and not in his or her capacity as a member or officer of the organization with which he or she is connected. The license will be forwarded to the director of the designated Center, who will deliver it to the licensee.

■ 11. In § 111.16, revise paragraphs (a) and (b) to read as follows:

§ 111.16 Denial of a license.

(a) *Notice of denial.* If the appropriate Executive Director, Office of Trade, determines that the application for a license should be denied for any reason, notice of denial will be given by him or her to the applicant and to the director of the designated Center. The notice of denial will state the reasons why the license was not issued.

(b) *Grounds for denial.* The grounds sufficient to justify denial of an application for a license include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of § 111.53;

(2) The failure to meet any requirement set forth in § 111.11;

(3) A failure to establish the business integrity and financial responsibility of the applicant;

(4) A failure to establish the good character and reputation of the applicant;

(5) Any willful misstatement or omission of pertinent facts in the application or interview for the license;

(6) Any conduct which would be deemed unfair or detrimental in commercial transactions by accepted standards;

(7) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of that conduct; or

(8) Any other relevant information uncovered over the course of the background investigation.

■ 12. Revise § 111.17 to read as follows.

§ 111.17 Review of the denial of a license.

(a) *By the appropriate Executive Director, Office of Trade.* Upon the denial of an application for a license, the applicant may file with the appropriate Executive Director, Office of Trade, in writing, additional information or arguments in support of the application and may request to appear in person, by telephone, or by other acceptable means of communication. This filing and request must be received by the appropriate Executive Director, Office of Trade within sixty (60) calendar days of the denial.

(b) *By the Executive Assistant Commissioner.* Upon the decision of the appropriate Executive Director, Office of Trade, affirming the denial of an application for a license, the applicant may file with the Executive Assistant Commissioner, in writing, a request for any additional review that the Executive Assistant Commissioner, deems appropriate. This request must be received by the Executive Assistant Commissioner within sixty (60) calendar days of the affirmation by the appropriate Executive Director, Office of Trade, of the denial of the application for a license.

(c) *By the Court of International Trade.* Upon a decision of the Executive Assistant Commissioner affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within sixty (60) calendar days after the date of entry of the Executive Assistant Commissioner's decision.

§ 111.18 [Amended]

■ 13. Amend § 111.18 by adding the phrase ''and addressing how deficiencies have been remedied'' after the term ''§ 111.12''.

■ 14. In § 111.19:

■ a. Revise the section heading;

■ b. Revise paragraphs (a) and (b);

■ d. Remove paragraph (d);

■ e. Redesignate paragraph (e) as paragraph (d) and revise the newly redesignated paragraph;

■ f. Revise paragraph (f); and

■ g. Redesignate paragraph (g) as paragraph (e) and revise the newly redesignated paragraph.

The revisions read as follows:

§ 111.19 National permit.

(a) *General.* A national permit is required for the purpose of transacting customs business throughout the customs territory of the United States as defined in § 101.1 of this chapter.

(b) *Application for a national permit.* An applicant who obtains a passing grade on the examination for an individual broker's license may apply for a national permit. The applicant will exercise responsible supervision and control (as described in § 111.28 of this part) over the activities conducted under that national permit. The national permit application may be submitted concurrently with or after the submission of an application for a broker's license. An applicant applying for a national permit on behalf of a partnership, association, or corporation must be a licensed broker employed by the partnership, association, or corporation. An application for a national permit under this paragraph must be in the form of a letter or CBP-approved electronic submission to the director of the designated Center. The application must set forth or attach the following:

(1) The applicant's broker license number and date of issuance if available;

(2) If the applicant is applying for a national permit on behalf of a partnership, association, or corporation: The name of the partnership, association, or corporation and the title held by the applicant within the partnership, association, or corporation;

(3) If the applicant is applying for a national permit on behalf of a partnership, association, or corporation: A copy of the documentation issued by a State, or local government that establishes the legal status and reserves the business name of the partnership, association, or corporation;

(4) The address, telephone number, and email address of the office designated by the applicant as the office of record as defined in § 111.1. The office will be noted in the national permit when issued;

(5) The name, telephone number, and email address of the point of contact described in § 111.3(b) to be available to CBP to respond to issues related to the transaction of customs business;

(6) If the applicant is applying for a national permit on behalf of a partnership, association, or corporation: The name, broker license number, office address, telephone number, and email address of each individual broker employed by the partnership, association, or corporation;

(7) A list of all employees together with the specific employee information prescribed in § 111.28 for each employee;

(8) A supervision plan describing how responsible supervision and control will be exercised over the customs business conducted under the national permit, including compliance with § 111.28;

(9) The location where records will be retained (*see* § 111.23);

(10) The name, telephone number, and email address of the knowledgeable employee responsible for broker-wide records maintenance and financial

recordkeeping requirements (*see* § 111.21(d)); and

(11) A receipt or other evidence showing that the fees specified in § 111.96(b) and (c) have been paid in accordance with paragraph (b) of this section.

* * * * *

(d) *Action on application; list of permitted brokers.* The director of the designated Center who receives the application will review to determine whether the applicant meets the requirements of paragraphs (a) and (b) of this section. If the director of the designated Center is of the opinion that the national permit should not be issued, he or she will submit his or her written reasons for that opinion to the appropriate Executive Director, Office of Trade, CBP Headquarters, for appropriate instructions on whether to grant or deny the national permit. The appropriate Executive Director, Office of Trade, CBP Headquarters, will notify the applicant if his or her application is denied. CBP will issue a national permit to an applicant who meets the requirements of paragraphs (a) and (b) of this section. CBP will maintain and make available to the public an alphabetical list of permitted brokers.

(e) *Review of the denial of a national permit*—(1) *By the Executive Assistant Commissioner.* Upon the denial of an application for a national permit under this section, the applicant may file with the Executive Assistant Commissioner, in writing, additional information or arguments in support of the denied application and may request to appear in person, by telephone, or by other acceptable means of communication. This filing and request must be received by the Executive Assistant Commissioner within sixty (60) calendar days of the denial.

(2) *By the Court of International Trade.* Upon a decision of the Executive Assistant Commissioner affirming the denial of an application for a national permit under this section, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within sixty (60) calendar days after the date of entry of the decision by the Executive Assistant Commissioner.

(f) *Responsible supervision and control.* The individual broker who qualifies for the national permit will exercise responsible supervision and control (as described in § 111.28 of this part) over the activities conducted under that national permit.

■ 15. In § 111.21:

■ a. Redesignate paragraphs (b) and (c) as paragraphs (c) and (d);

■ b. Add a new paragraph (b); and

■ c. Revise the newly redesignated paragraph (d).

The addition and revision read as follows:

§ 111.21 Record of transactions.

* * * * *

(b) Each broker must provide notification to the broker's designated Center of any known breach of electronic or physical records relating to the broker's customs business. Notification to CBP must be provided within 72 hours of the discovery of the breach with a list of all compromised importer identification numbers (*see* 19 CFR 24.5).

* * * * *

(d) Each broker must designate a knowledgeable employee as the party responsible for brokerage-wide recordkeeping requirements. Each broker must maintain accurate and current point of contact information in a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, then the information must be provided in writing to the director of the designated Center.

■ 16. In § 111.23, revise paragraph (a) to read as follows:.

§ 111.23 Retention of records.

(a) *Place of retention.* A licensed customs broker must maintain the records referred to in this part, including any records stored in electronic formats, within the customs territory of the United States and in accordance with the provisions of this part and part 163 of this chapter.

* * * * *

■ 17. Revise § 111.24 to read as follows:

§ 111.24 Records confidential.

The records referred to in this part and pertaining to the business of the clients serviced by the broker are to be considered confidential, and the broker must not disclose their contents or any information connected with the records to any persons other than those clients, their surety on a particular entry, and representatives of the Department of Homeland Security (DHS), or other duly accredited officers or agents of the United States, except on subpoena or court order by a court of competent jurisdiction, or when authorized in writing by the client. This confidentiality provision does not apply to information that properly is available from a source open to the public.

■ 18. Revise § 111.25 to read as follows:

§ 111.25 Records must be available.

(a) *General.* During the period of retention, the broker must maintain the records referred to in this part in such a manner that they may readily be examined. Records required to be maintained under the provisions of this part must be made available upon reasonable notice for inspection, copying, reproduction or other official use by representatives of the Department of Homeland Security (DHS) within the prescribed period of retention or within any longer period of time during which they remain in the possession of the broker.

(b) *Examination request.* Upon request by DHS to examine records, the designated recordkeeping contact (*see* § 111.21(d)), must make all records available to DHS within thirty (30) calendar days, or such longer time as specified by DHS, at the location specified by DHS.

(c) *Recordkeeping requirements.* Records subject to the requirements of part 163 of this chapter must be made available to DHS in accordance with the provisions of that part.

§ 111.27 [Amended]

■ 19. Amend § 111.27 by removing the phrase ''the port director and other proper officials of the Treasury Department'' and adding in its place the phrase ''DHS, or other duly accredited officers or agents of the United States,''.

■ 20. In § 111.28:

■ a. Revise the section heading ;

■ b. Revise paragraph (a);

■ c. Revise paragraph (b);

■ d. Redesignte paragraphs (c) and (d) as (d) and (e);

■ e. Add a new paragraph (c);

■ f. Amend newly redesignated paragraph (d) by:

■ 1. Removing the words ''Assistant Commissioner'' and adding in their place the words ''appropriate Executive Director, Office of Trade,''; and

■ 2. Removing the phase ''each port through which a permit has been granted to the partnership, association, or corporation'' and adding in its place the phrase ''the designated Center''; and

■ g. Revising newly redesignated paragraph (e).

The additions and revisions read as follows:

§ 111.28 Responsible supervision and control.

(a) *General.* Every individual broker operating as a sole proprietor, every licensed member of a partnership that is a broker, and every licensed officer of an association or corporation that is a broker must exercise responsible supervision and control (see § 111.1) over the transaction of the customs business of the sole proprietorship, partnership, association, or corporation.

A sole proprietorship, partnership, association, or corporation must employ a sufficient number of licensed brokers relative to the job complexity, similarity of subordinate tasks, physical proximity of subordinates, abilities and skills of employees, and abilities and skills of the managers. While the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which CBP may consider in its discretion and to the extent any are relevant include, but are not limited to the following:

(1) The training provided to broker employees;

(2) The issuance of instructions and guidelines to broker employees;

(3) The volume and type of business of the broker;

(4) The reject rate for the various customs transactions relative to overall volume;

(5) The broker employees' accessibility to current editions of CBP regulations, the Harmonized Tariff Schedule of the United States, and CBP issuances;

(6) The availability of a sufficient number of individually licensed brokers for necessary consultation with employees of the broker;

(7) The frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have an individually licensed broker;

(8) The frequency of audits and reviews by an individually licensed broker of the customs transactions handled by employees of the broker;

(9) The extent to which the individually licensed broker who qualifies the permit is involved in the operation of the brokerage and communications between CBP and the broker;

(10) Any circumstances which indicate that an individually licensed broker has a real interest in the operations of a broker;

(11) The timeliness of processing entries and payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client;

(12) Communications between CBP and the broker;

(13) The broker's responsiveness and action to communications, direction, and notices from CBP;

(14) Communications between the broker and its officer(s); and,

(15) The broker's responsiveness and action to communications and direction from its officer(s).

(b) *Employee information*—(1) *Current employees.* Each national permit holder must submit to the director of the designated Center, a list of the names of persons currently employed by the broker. The list of employees must be submitted prior to issuance of a national permit under § 111.19 and before the broker begins to transact customs business. For each employee, the broker must provide the name, social security number, date and place of birth, date of hire, and current home address. After the initial submission, an updated list must be submitted to a CBP-authorized electronic data interchange (EDI) system if any of the information required by this paragraph changes. If a CBP-authorized EDI system is not available, then the information must be provided in writing to the director of the designated Center. The update must be submitted within thirty (30) calendar days of the change.

(2) *New employees.* Within thirty (30) calendar days of the start of employment of a new employee(s), the broker must submit a list of new employee(s) with the information required under paragraph (b)(1) of this section to a CBP-authorized EDI system. The broker may submit a list of the new employees or an updated list of all employees, specifically noting the new employee(s). If a CBP-authorized EDI system is not available, then the information must be provided in writing to the director of the designated Center.

(3) *Terminated employees.* Within thirty (30) calendar days after the termination of employment of an employee, the broker must submit a list of terminated employee(s) to a CBP-authorized EDI system. The broker may submit a list of the terminated employees or an updated list of all employees, specifically noting the terminated employee(s). If a CBP-authorized EDI system is not available, then the information must be provided in writing to the director of the designated Center.

(c) *Broker's responsibility.* Notwithstanding a broker's responsibility for providing the information required in paragraph (b) of this section, in the absence of culpability by the broker, CBP will not hold the broker responsible for the accuracy of any information that is provided to the broker by the employee.

* * * * *

(e) *Change in ownership.* If the ownership of a broker changes and ownership shares in the broker are not publicly traded, the broker must immediately provide written notice of that fact to the appropriate Executive Director, Office of Trade, and must send a copy of the written notice to the director of the designated Center. When a change in ownership results in the addition of a new principal to the organization, and whether or not ownership shares in the broker are publicly traded, CBP reserves the right to conduct a background investigation on the new principal. The director of the designated Center will notify the broker if CBP objects to the new principal, and the broker will be given a reasonable period of time to remedy the situation. If the background investigation uncovers information which would have been the basis for a denial of an application for a broker's license and the principal's interest in the broker is not terminated to the satisfaction of the director of the designated Center, suspension or revocation proceedings may be initiated under subpart D of this part. For purposes of this paragraph, a ''principal'' means any person having at least a five (5) percent capital, beneficiary or other direct or indirect interest in the business of a broker.

■ 21. In § 111.30:

■ a. Paragraphs (a) and (b) are revised;

■ b. In paragraph (c), the first sentence is revised;

■ c. In paragraph (d):

■ 1. The paragraph heading is amended by removing the word ''Status'' and adding in its place the words ''Triennial status'';

■ 2. Paragraphs (1) through (3) are revised;

■ 3. Paragraph (4) is amended by:

■ i. Removing the words ''the port director'' and the word ''Customs'' before the word ''records'' and adding in each place the word ''CBP'';

■ ii. Removing the word ''pays'' and adding in its place the words ''submits payment or proof of payment of''; and

■ iii. Removing the words ''Customs Bulletin'' and adding in their place the words ''**Federal Register**''; and

■ d. In paragraph (e), remove the words ''each port where the broker was transacting business within each district for which a permit has been issued to the broker'' and add in their place the words ''the designated Center''.

The revisions read as follows:

§ 111.30 Notification of change in address, organization, name, or location of business records; status report; termination of brokerage business.

(a) *Change of address.* A broker is responsible for providing CBP with the broker's current addresses, which include the broker's office of record address as defined in § 111.1 and, if the broker is not actively engaged in transacting business as a broker, the

broker's non-business address. If a broker does not receive mail at the broker's office of record or non-business address, the broker must also provide CBP with a valid address at which he or she receives mail. When address information changes, or the broker is no longer actively engaged in transacting business as a broker, he or she must update his or her address information within ten (10) calendar days through a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, then address updates must be provided in writing within ten (10) calendar days to the director of the designated Center.

(b) *Change in organization.* A partnership, association, or corporation broker must update within ten (10) calendar days in writing to the director of the designated Center any of the following:

(1) The date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of § 111.11(b) or (c)(2), and the name of the licensed member or officer who will succeed as the license qualifier;

(2) The date on which a licensed employee ceases to be the national permit qualifier for purposes of § 111.19(a), and the name of the licensed employee who will succeed as the national permit qualifier; and

(3) Any change in the Articles of Agreement, Charter, Articles of Association, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization (for example, conversion of a general partnership to a limited partnership, merger with another organization, divestiture of a part of the organization, or entry into bankruptcy protection).

(c) *Change in name.* A broker who changes his or her name, or who proposes to operate under a trade or fictitious name in one or more States and is authorized by State law to do so, must submit to the appropriate Executive Director, Office of Trade, at the Headquarters of U.S. Customs and Border Protection, evidence of his or her authority to use that name. * * *

* * * * *

(d) *Triennial status report*—(1) *General.* Each broker must file a triennial status report with CBP on February 1 of each third year after 1985. The report must be filed through the CBP-authorized EDI system and accompanied by payment or valid proof of payment of the triennial status report fee prescribed in § 111.96(d). If a CBP-authorized EDI system is not available, the triennial status report must be filed with the director of the designated Center. A report received during the month of February will be considered filed timely. No form or particular format is required.

(2) *Individual*—(i) Each individual broker must state in the report required under paragraph (d)(1) of this section whether he or she is actively engaged in transacting business as a broker. If he or she is so actively engaged, the broker must also:

(A) State the name under which, and the address at which, the broker's business is conducted if he or she is a sole proprietor;

(B) State the name and address of his or her employer if he or she is employed by another broker, unless his or her employer is a partnership, association or corporation broker for which he or she is a qualifying member or officer for purposes of § 111.11(b) or (c)(2); and

(C) State whether or not he or she still meets the applicable requirements of § 111.11 and § 111.19 of this part and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53 of this part.

(ii) An individual broker not actively engaged in transacting business as a broker must provide CBP with the broker's current mailing address, and state whether or not he or she still meets the applicable requirements of § 111.11 and § 111.19 of this part and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53 of this part.

(3) *Partnership, association, or corporation*—(i) Each partnership, association, or corporation broker must state in the report required under paragraph (d)(1) of this section the name under which its business as a broker is being transacted, the broker's office of record (*see* § 111.1), the name and address of each licensed member of the partnership or licensed officer of the association or corporation, including the license qualifier under § 111.11(b) or (c)(2) and the name of the licensed employee who is the national permit qualifier under § 111.19(a), and whether the partnership, association, or corporation is actively engaged in transacting business as a broker. The report must be signed by a licensed member or officer.

(ii) A partnership, association, or corporation broker must state whether or not the partnership, association, or corporation broker still meets the applicable requirements of § 111.11 and § 111.19 of this part and has not engaged in any conduct that could constitute grounds for suspension or revocation under § 111.53 of this part.

* * * * *

■ 22. Section 111.32 is revised to read as follows:

§ 111.32 False information.

A broker must not file or procure or assist in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false. In addition, a broker must not give, or solicit or procure the giving of, any information or testimony that the broker knew or should have known was false or misleading in any matter pending before the Department of Homeland Security or to any representative of the Department of Homeland Security. A broker also must document and report to CBP when the broker separates from or cancels representation of a client as a result of determining the client is intentionally attempting to use the broker to defraud or otherwise commit any criminal act against the U.S. Government.

■ 23. In § 111.36, revise paragraph (c)(3) to read as follows:

§ 111.36 Relations with unlicensed persons.

* * * * *

(c) * * *

(3) The broker must obtain a customs power of attorney directly from the importer of record or drawback claimant, and not via a freight forwarder, to transact customs business for that importer of record or drawback claimant. No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant to the agreement, can forbid or prevent direct communication between the importer of record, drawback claimant, or other party in interest and the broker; and

* * * * *

■ 24. In § 111.39:

■ a. Paragraph (a) is revised;

■ b. Paragraphs (b) and (c) are redesignated as paragraphs (c) and (d);

■ c. A new paragraph (b) is added; and

■ d. Newly redesignated paragraph (c) is amended by:

■ 1. Removing the word ''paper'' and adding in its place the word ''record''; and

■ 2. Adding a sentence to the end of the paragraph.

The additions and revisions reads as follows:

§ 111.39 Advice to client.

(a) *Withheld or false information.* A broker must not withhold information relative to any customs business from a client who is entitled to the information.

The broker must not knowingly impart to a client false information relative to any customs business.

(b) *Due diligence.* A broker must exercise due diligence to ascertain the correctness of any information which the broker imparts to a client, including advice to the client on the proper payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

(c) * * *The broker must advise the client on the proper corrective actions required and retain a record of the broker's communication with the client in accordance with § 111.23 of this part.

* * * * *

§ 111.42 [Amended]

■ 25. In § 111.42:

■ a. Paragraph (a)(1) is amended by removing the word ''Customs'' and adding in its place the word ''customs''; and

■ b. Paragraph (a)(3) is amended by:

■ 1. Adding the word ''Executive'' before the word ''Assistant''; and

■ 2. Adding the phrase '', or his or her designee,'' after the words ''Assistant Commissioner''.

■ 26. In § 111.45:

■ a. Paragraphs (a), (b), and (c) are revised; and

■ b. In paragraph (d), remove the cross-reference ''or (b)'' in the second sentence.

The revisions read as follows:

§ 111.45 Revocation by operation of law.

(a) *License and permit.* If a broker that is a partnership, association, or corporation fails to have, during any continuous period of 120 days, at least one member of the partnership or at least one officer of the association or corporation who holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the license and the national permit issued to the partnership, association, or corporation. If a broker that is a partnership, association, or corporation fails to employ, during any continuous period of 180 days, a licensed customs broker who is the national permit qualifier for the broker, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the national permit issued to the partnership, association, or corporation. CBP will notify the broker in writing of an impending revocation by operation of law under this section thirty (30) calendar days before the revocation is due to occur, if the broker has provided advance notice to CBP of the underlying events that could cause a revocation by operation of law under this section. If the license or permit of a partnership, association, or corporation is revoked by operation of law, CBP will notify the organization of the revocation.

(b) *Annual broker permit fee.* If a broker fails to pay the annual permit user fee pursuant to § 111.96(c), the permit is revoked by operation of law. The director of the designated Center will notify the broker in writing of the failure to pay and the revocation of the permit.

(c) *Publication.* Notice of any revocation under this section will be published in the **Federal Register**.

* * * * *

■ 27. In § 111.51:

■ a. Paragraph (a) is revised;

■ b. Paragraph (b) is amended by:

■ 1. Removing the words ''Assistant Commissioner'' and adding in their place the words ''appropriate Executive Director, Office of Trade,''; and

■ 2. Removing the word ''Secretary'' and adding in its place the words ''Executive Assistant Commissioner''.

The revision reads as follows:

§ 111.51 Cancellation of license or permit.

(a) *Without prejudice.* The appropriate Executive Director, Office of Trade, may cancel a broker's license or permit ''without prejudice'' upon written application by the broker if the appropriate Executive Director, Office of Trade, determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license or permit. If the appropriate Executive Director, Office of Trade, determines that the application for cancellation was made in order to avoid those proceedings, he or she may cancel the license or permit ''without prejudice'' only with authorization from the Executive Assistant Commissioner.

* * * * *

§ 111.52 [Amended]

■ 28. Amend § 111.52 by removing the words ''Assistant Commissioner'' and adding in their place the words ''appropriate Executive Director, Office of Trade,''.

■ 29. In § 111.53:

■ a. Remove the word ''Customs'' wherever they appear and add in their place the term ''CBP'';

■ b. Amend paragraph (e) by removing the words ''Assistant Commissioner'' and adding in their place the words ''appropriate Executive Director, Office of Trade'';

■ c. Amend paragraph (f) by removing the word ''or'' following the semicolon;

■ d. Redesignate paragraph (g) as paragraph (h); and

■ e. Add a new paragraph (g).

The addition reads as follows:

§ 111.53 Grounds for suspension or revocation of license or permit.

* * * * *

(g) The broker has been convicted of committing or conspiring to commit an act of terrorism as described in section 2332b of title 18, United States Code; or''

* * * * *

■ 30. Revise § 111.55 to read as follows:

§ 111.55 Investigation of complaints.

Every complaint or charge against a broker which may be the basis for disciplinary action may be forwarded for investigation to the appropriate investigative authority within DHS. The investigative authority will submit a final report on the investigation of complaints to the director of the designated Center and send a copy of the report to the appropriate Executive Director, Office of Trade.

■ 31. Revise § 111.56 to read as follows:

§ 111.56 Review of report on the investigation of complaints.

The director of the designated Center will review the report on the investigation of complaints, or if there is no report on the investigation of complaints, other documentary evidence, to determine if there is sufficient basis to recommend that charges be preferred against the broker. The Center director will then submit his or her recommendation with supporting reasons to the appropriate Executive Director, Office of Trade, for final determination together with a proposed statement of charges when recommending that charges be preferred.

■ 32. Revise § 111.57 to read as follows:

§ 111.57 Determination by appropriate Executive Director, Office of Trade.

The appropriate Executive Director, Office of Trade, will make a determination on whether or not charges should be preferred, and will notify the director of the designated Center of the decision.

§ 111.59 [Amended]

■ 33. In § 111.59, paragraphs (a) and (b) are amended by removing the word ''port'' before the word ''director'' and adding the words ''of the designated Center'' after the word ''director''.

§ 111.60 [Amended]

■ 34. In § 111.60, remove the word ''port'' and add the words ''of the

designated Center'' after the word ''director''.

■ 35. Revise § 111.61 to read as follows:

§ 111.61 Decision on preliminary proceedings.

The director of the designated Center will prepare a summary of any oral presentations made by the broker or the broker's attorney and forward it to the appropriate Executive Director, Office of Trade, together with a copy of each paper filed by the broker. The director of the designated Center will also give to the appropriate Executive Director, Office of Trade, his or her recommendation on action to be taken as a result of the preliminary proceedings. If the appropriate Executive Director, Office of Trade, determines that the broker has satisfactorily responded to the proposed charges and that further proceedings are not warranted, he or she will so inform the director of the designated Center who will notify the broker. If no response is filed by the broker or if the appropriate Executive Director, Office of Trade, determines that the broker has not satisfactorily responded to all of the proposed charges, he or she will advise the director of the designated Center of that fact and instruct him or her to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker in the preliminary proceedings, the appropriate Executive Director, Office of Trade, will instruct the director of the designated Center to omit those charges from the statement of charges.

■ 36. In § 111.62:

■ a. Revise paragraph (d); and

■ b. Amend paragraph (e) by removing the phrase '', in duplicate'' and the word ''port'', and adding the words ''of the designated Center'' after the word ''director''.

The revision reads as follows:

§ 111.62 Contents of notice of charges.

* * * * *

(d) The broker will be notified of the time and place of a hearing on the charges; and

* * * * *

■ 37. In § 111.63:

■ a. Remove the word ''port''wherever it appears and add the words ''of the designated Center'' after the word ''director'' wherever it appears; and

■ b. Paragraphs (a)(2) and (c) are revised.

The revisions read as follows:

§ 111.63 Service of notice and statement of charges.

* * * * *

(a) * * *

(2) By certified mail, return receipt requested, addressed to the broker's office of record (or other address as provided pursuant to § 111.30).

* * * * *

(c) *Certified mail; evidence of service.* When service under this section is by certified mail to the broker's office of record (or other address as provided pursuant to § 111.30), the receipt of the return card signed or marked will be satisfactory evidence of service.

§ 111.64 [Amended]

■ 38. In § 111.64, paragraph (a) is amended by removing the word ''port'' and adding the words ''of the designated Center'' after the word ''director''.

§ 111.66 [Amended]

■ 39. Section 111.66 is amended by removing the words ''Secretary of Homeland Security, or his designee,'' and adding in its place the words ''Executive Assistant Commissioner''.

§ 111.67 [Amended]

■ 40. In § 111.67:

■ a. Paragraph (d) is amended by removing the word ''port'' wherever it appears and adding the words ''of the designated Center'' after the word ''director'' wherever it appears; and

■ b. Paragraph (e) is removed.

§ 111.69 [Amended]

■ 41. Section 111.69 is amended by removing the words ''Secretary of Homeland Security, or his designee'' and adding in their place the words ''Executive Assistant Commissioner''.

§ 111.70 [Amended]

■ 42. Section 111.70 is amended by removing the words ''Secretary of Homeland Security, or his designee'' and adding in their place the words ''Executive Assistant Commissioner''.

§ 111.71 [Amended]

■ 43. Section 111.71 is amended by removing the words ''Secretary of Homeland Security, or his designee'' and adding in their place the words ''Executive Assistant Commissioner''.

■ 44. Revise § 111.72 to read as follows:

§ 111.72 Dismissal subject to new proceedings.

If the Executive Assistant Commissioner finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he or she may instruct the director of the designated Center to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedures set forth in this subpart.

■ 45. Revise § 111.74 to read as follows:

§ 111.74 Decision and notice of suspension or revocation or monetary penalty.

If the Executive Assistant Commissioner finds that one or more of the charges in the statement of charges is not sufficiently proved, the suspension, revocation, or monetary penalty action may be based on any remaining charges if the facts alleged in the charges are established by the evidence. If the Executive Assistant Commissioner in the exercise of discretion and based solely on the record, issues an order suspending a broker's license or permit for a specified period of time or revoking a broker's license or permit or, except in a case described in § 111.53(b)(3), assessing a monetary penalty in lieu of suspension or revocation, the appropriate Executive Director, Office of Trade, will promptly provide written notification of the order to the broker and, unless an appeal from the order of the Executive Assistant Commissioner is filed by the broker (see § 111.75), the appropriate Executive Director, Office of Trade, will publish a notice of the suspension or revocation, or the assessment of a monetary penalty, in the **Federal Register**. If no appeal from the order of the Executive Assistant Commissioner is filed, an order of suspension or revocation or assessment of a monetary penalty will become effective sixty (60) calendar days after issuance of written notification of the order unless the Executive Assistant Commissioner finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal from the order of the Executive Assistant Commissioner is filed, payment of the penalty must be tendered within sixty (60) calendar days after the effective date of the order, and, if payment is not tendered within that sixty (60)-day period, the license or permit of the broker will immediately be suspended until payment is made.

§ 111.75 [Amended]

■ 46. In § 111.75:

■ a. In the section heading, remove the word ''Secretary's'' and add in its place the words ''Executive Assistant Commissioner's'';

■ b. Remove the words ''Secretary of Homeland Security, or his designee'' and add in their place the words ''Executive Assistant Commissioner''; and

■ c. Remove the word ''Secretary's'' and add in its place the words ''Executive Assistant Commissioner's''.

■ 47. In § 111.76:

■ a. In paragraph (a), remove the word ''written'' and the words ''in duplicate'' in the first sentence; and remove the words ''Assistant Commissioner'' and add in their place the words ''appropriate Executive Director, Office of Trade,''; and

■ b. Paragraph (b) is revised.

The revision reads as follows:

§ 111.76 Reopening the case.

* * * * *

(b) *Procedure.* The appropriate Executive Director, Office of Trade, will forward the application, together with a recommendation for action thereon, to the Executive Assistant Commissioner. The Executive Assistant Commissioner may grant or deny the application to reopen the case and may order the taking of additional testimony before the appropriate Executive Director, Office of Trade. The appropriate Executive Director, Office of Trade, will notify the applicant of the decision by the Executive Assistant Commissioner. If the Executive Assistant Commissioner grants the application and orders a hearing, the appropriate Executive Director, Office of Trade, will set a time and place for the hearing and give due written notice of the hearing to the applicant. The procedures governing the new hearing and recommended decision of the hearing officer will be the same as those governing the original proceeding. The original order of the Executive Assistant Commissioner will remain in effect pending conclusion of the new proceedings and issuance of a new order under § 111.77.

■ 48. Revise § 111.77 to read as follows:

§ 111.77 Notice of vacated or modified order.

If, pursuant to § 111.76 or for any other reason, the Executive Assistant Commissioner issues an order vacating or modifying an earlier order under § 111.74 suspending or revoking a broker's license or permit, or assessing a monetary penalty, the appropriate Executive Director, Office of Trade, will notify the broker in writing and will publish a notice of the new order in the **Federal Register**.

§ 111.78 [Amended]

■ 49. Section 111.78 is amended by removing the word ''port'' and adding the words ''of the designated Center'' after the word ''director''.

§ 111.79 [Amended]

■ 50. Section 111.79 is amended by removing the words ''Assistant Commissioner'' and adding in their place the words ''appropriate Executive Director, Office of Trade,'' wherever they appear.

■ 51. Revise § 111.81 to read as follows.

§ 111.81 Settlement and compromise.

The Executive Assistant Commissioner, may settle and compromise any disciplinary proceeding which has been instituted under this subpart according to the terms and conditions agreed to by the parties including, but not limited to, the assessment of a monetary penalty in lieu of any proposed suspension or revocation of a broker's license or permit.

§ 111.91 [Amended]

■ 52. In § 111.91:

■ a. The introductory text is amended by removing the word ''Customs'' and adding in its place the term ''CBP''; and

■ b. Paragraph (a) is amended by removing the phrase '' §§ 111.53 (a) through (f)'' and adding in its place the phrase ''§ 111.53 (a) through (g)''.

§ 111.92 [Amended]

■ 53. In § 111.92, amend paragraph (a) by removing the word ''Customs'' and adding in its place the term ''CBP''.

§ 111.94 [Amended]

■ 54. Section 111.94 is amended by removing the word ''Customs'' wherever it appears and adding in its place the term ''CBP''.

■ 55. In § 111.96, revise paragraphs (a), (b) and (d) to read as follows.

§ 111.96 Fees.

(a) *License fee; examination fee; fingerprint fee.* Each applicant for a broker's license pursuant to § 111.12 of this part must pay a fee of $300 for an individual license application and $500 for a partnership, association, or corporation license application to defray the costs to CBP in processing the application. Each individual who intends to take the examination provided for in § 111.13 of this part must pay a $390 examination fee before taking the examination. An individual who submits an application for a license must also pay a fingerprint check and processing fee; the director of the designated Center will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks and the CBP fingerprint processing fee, the total of which must be paid to CBP before further processing of the application will occur.

(b) *Permit application fee.* An application fee of $100 must be paid in connection with a national permit issued under § 111.19 of this part to defray the processing costs, including costs associated with an application for reinstatement of a permit that was revoked by operation of law or otherwise.

* * * * *

(d) *Triennial status report fee.* The triennial status report required under § 111.30(d) must be accompanied by a fee of $100 to defray the costs of administering the reporting requirement. The report must be filed through the CBP-authorized EDI system and accompanied

by payment or valid proof of payment of the triennial status report fee prescribed by this section. If a CBP-authorized EDI system is not available, the triennial status report must be filed with the director of the designated Center.

* * * * *

Dated: March 3, 2020.

Chad F. Wolf,

Acting Secretary, Department of Homeland Security.

[FR Doc. 2020–04711 Filed 6–4–20; 8:45 am]

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Part IV

Bureau of Consumer Financial Protection

12 CFR Part 1005

Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E); Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2019–0058]

RIN 3170–AA96

Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Electronic Fund Transfer Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, establishes certain protections for consumers sending international money transfers, or remittance transfers. The Bureau of Consumer Financial Protection's (Bureau) remittance rule in Regulation E (Remittance Rule or Rule) implements these protections. The Bureau is amending Regulation E and the official interpretations of Regulation E to provide tailored exceptions to address compliance challenges that insured institutions may face in certain circumstances upon the expiration of a statutory exception that allows insured institutions to disclose estimates instead of exact amounts to consumers. That exception expires on July 21, 2020. In addition, the Bureau is increasing a safe harbor threshold in the Rule related to whether a person makes remittance transfers in the normal course of its business.

DATES: This final rule is effective July 21, 2020.

FOR FURTHER INFORMATION CONTACT: David Gettler, Paralegal Specialist, Yaritza Velez, Counsel, or Krista Ayoub, or Jane Raso, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

The Bureau is adopting several amendments to the Remittance Rule,[1] which implements section 919 of the Electronic Fund Transfer Act (EFTA)[2] governing international remittance transfers. First, the Bureau is adopting amendments to increase a safe harbor threshold in the Rule. Under both EFTA and the Rule, the term ''remittance transfer provider'' is defined, in part, to mean any person that provides remittance transfers for a consumer in the normal course of its business.[3] As originally adopted, the normal course of business safe harbor threshold stated that a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer remittance transfers in the current calendar year.[4] The Bureau is adopting amendments to increase the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually.[5] These changes to the normal course of business safe harbor threshold appear in the definition of remittance transfer provider in § 1005.30(f) and related commentary.

Second, the Bureau is adopting tailored exceptions to the Remittance Rule to address compliance challenges insured institutions may face in certain circumstances upon the expiration of a statutory exception that allows insured institutions to disclose estimates to consumers of the exchange rate and covered third-party fees instead of exact amounts (the temporary exception). This exception expires on July 21, 2020. Specifically, with respect to the exchange rate, the Bureau is adopting a new, permanent exception that permits insured institutions to estimate the exchange rate for a remittance transfer to a particular country if, among other things, the designated recipient will receive funds in the country's local currency and the insured institution made 1,000 or fewer remittance transfers in the prior calendar year to that country when the designated recipients received funds in the country's local currency. With respect to covered third-party fees, the Bureau is adopting a new, permanent exception that will permit insured institutions to estimate covered third-party fees for a remittance transfer to a designated recipient's institution if, among other things, the insured institution made 500 or fewer remittance transfers to that designated recipient's institution in the prior calendar year.

With respect to both exceptions, the Bureau is adopting a transition period for insured institutions that exceed, as applicable, the 1,000-transfer or 500-transfer thresholds in a certain year. This transition period will allow these institutions to continue to provide estimates for a reasonable period of time while they come into compliance with the requirement to provide exact amounts. Additionally, the Bureau released a statement on April 10, 2020 announcing that in light of the COVID–19 pandemic, for remittance transfers that occur on or after July 21, 2020, and before January 1, 2021, the Bureau does not intend to cite in an examination or initiate an enforcement action in connection with the disclosure of exact third-party fees and exchange rates against any insured institution that will be newly required to disclose exact third-party fees and exchange rates after the temporary exception expires.

The temporary exception and its statutorily mandated expiration date are in existing § 1005.32(a)(1) and (2); the Bureau's amendments to add the new exceptions appear in new § 1005.32(b)(4) and (5) and related commentary, along with conforming changes in existing §§ 1005.32(c), 1005.33(a)(1)(iii)(A), and 1005.36(b)(3) and in the existing commentary accompanying §§ 1005.32, 1005.32(b)(1), (c)(3) and (d), and 1005.36(b). Lastly, the Bureau is adopting technical corrections in § 1005.32(c)(4) and existing commentary that accompany §§ 1005.31(b)(1)(viii) and 1005.32(b)(1). These technical corrections do not change or alter the meaning of the existing regulatory text and commentary.

Due to changes in requirements by the Office of the Federal Register, when amending commentary the Bureau is now required to reprint certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of commentary included in this document show the language of those sections as amended by this final rule. The Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that it is making to the regulatory text and commentary of the Remittance Rule.[6]

[1] 77 FR 6194 (Feb. 7, 2012); as amended on 77 FR 40459 (July 10, 2012), 77 FR 50243 (Aug. 20, 2012), 78 FR 6025 (Jan. 29, 2013), 78 FR 30661 (May 22, 2013), 78 FR 49365 (Aug. 14, 2013), 79 FR 55970 (Sept. 18, 2014), 81 FR 70319 (Oct. 12, 2016), and 81 FR 83934 (Nov. 22, 2016) (together, Remittance Rule or Rule).

[2] 15 U.S.C. 1693 *et seq.* EFTA section 919 is codified at 15 U.S.C. 1693*o*–1.

[3] EFTA section 919(g)(3), codified at 15 U.S.C. 1693*o*–1(g)(3); 12 CFR 1005.30(f)(1).

[4] 12 CFR 1005.30(f)(2)(i).

[5] As used in this document, ''100 transfers annually'' or ''500 transfers annually'' refers to the normal course of business safe harbor threshold, which is based on the number of remittance transfers provided in the previous and current calendar years.

[6] This redline can be found on the Bureau's regulatory implementation page for the Remittance Rule, at *https://www.consumerfinance.gov/policy-compliance/guidance/remittance-transfer-rule/.* If any conflicts exist between the redline and the text of the Remittance Rule or this final rule, the rules

II. Background

A. Market Overview

Consumers in the United States send billions of dollars in remittance transfers to recipients in foreign countries each year. The term ''remittance transfers'' is sometimes used to describe consumer-to-consumer transfers of small amounts of money, often made by immigrants supporting friends and relatives in other countries. The term may also include, however, consumer-to-business payments of larger amounts, for instance, to pay bills, tuition, or other expenses.

Money services businesses (MSBs) as well as banks and credit unions send remittance transfers on behalf of consumers. MSBs, however, provide the overwhelming majority of remittance transfers for consumers in the United States. For example, in the Bureau's October 2018 Remittance Rule Assessment Report,[7] which is discussed in detail below, the Bureau observed that in 2017, MSBs provided approximately 95.5 percent of all remittance transfers for consumers. The average amount of a remittance transfer sent by MSBs on behalf of consumers was approximately $381.

Banks and credit unions generally send fewer remittance transfers on behalf of consumers than MSBs. The Bureau found that in 2017, banks and credit unions conducted 4.2 and 0.2 percent of all remittance transfers, respectively. However, the average amount that banks and credit unions transferred was much greater than the average amount transferred by MSBs. For example, based on the Bureau's analysis, the average transfer size of a bank-sent remittance transfer was more than $6,500.[8] As such, based on information it received as part of its assessment of the Remittance Rule in connection with the Assessment Report, while banks and credit unions provide a small percentage of the overall number of remittance transfers, because the average amount of the transfers they send is higher than MSBs, banks and credit unions collectively sent approximately 45 percent of the dollar volume of all remittance transfers sent for consumers in the United States (43 percent attributed to banks and 2 percent attributed to credit unions).

In addition, MSBs differ from banks and credit unions in the means by which they provide remittance transfers. Traditionally, MSBs sending remittance transfers have predominantly relied on a storefront model and a network of the MSBs' employees and agents (such as grocery stores and neighborhood convenience stores).[9] Because MSBs receive and disburse funds either through their own employees or agents, the payment system by which MSBs facilitate remittance transfers is typically referred to as a ''closed network'' payment system. A single entity in this system—the MSB—exerts a high degree of end-to-end control over a transaction. Such level of control means, among other things, that an entity that uses a closed network payment system to send remittance transfers can disclose to its customers precise and reliable information about the terms and costs of a remittance transfer before the entity sends the remittance transfer on its customers' behalf.

In contrast to MSBs, banks and credit unions have predominantly utilized an ''open network'' payment system made up of the correspondent banking network[10] to send remittance transfers on behalf of consumers.[11] The open network payment system based on the correspondent banking network lacks a single, central operator. This feature distinguishes it from closed network payment systems. The correspondent banking network is a decentralized network of bilateral banking relationships between the world's tens of thousands of banks and credit unions. Most institutions only maintain relationships with a relatively small number of correspondent banks but can nonetheless ensure that their customers' remittance transfers are able to reach a wide number of recipient financial institutions worldwide. Banks and credit unions can reach these institutions even if the banks and credit unions do not have control over, or a relationship with, all of the participants involved in the transmission of a remittance transfer. As discussed in greater detail in the section-by-section analysis of § 1005.32(a) below, the decentralized nature of the correspondent banking system has presented certain challenges to the ability of banks and credit unions to disclose precise and reliable information about the terms and costs of remittance transfers to its customers before these institutions send remittance transfers on their customers' behalf.

B. Remittance Rulemaking Under Section 1073 of the Dodd-Frank Act

Prior to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[12] remittance transfers fell largely outside of the scope of Federal consumer protection laws. Section 1073 of the Dodd-Frank Act amended EFTA by adding new section 919, which created a comprehensive system for protecting consumers in the United States who send remittance transfers to individuals and businesses in foreign countries. EFTA applies broadly in terms of the types of remittance transfers it covers. EFTA section 919(g)(2) defines ''remittance transfer'' as the electronic transfer of funds by a sender in any State to designated recipients located in foreign countries that are initiated by a remittance transfer provider; only small dollar transactions are excluded from this definition.[13] EFTA also applies broadly in terms of the providers subject

themselves, as published in the **Federal Register**, are the controlling documents.

[7] Bureau of Consumer Fin. Prot., *Remittance Rule Assessment Report* (Oct. 2018, rev. Apr. 2019) (Assessment Report), *https://.consumerfinance.gov///bcfp_remittance-rule-assessment_report_corrected_2019-03.pdf.* The Bureau's initial rule and certain amendments took effect in October 2013. As explained in the Assessment Report, the Assessment Report considers all rules that took effect through November 2014 and refers to them collectively as the Remittance Rule. *See* Assessment Report at 115.

[8] *Id.* at 73.

[9] *Id.* at 54. As noted in the Assessment Report, increased access to digital devices has impacted the traditional MSB model by enabling more MSB-facilitated transfers to be conducted via the internet. *See also id.* at 102.

[10] Generally speaking, a correspondent banking network is made up of individual correspondent banking relationships, which consist of bilateral arrangements under which one bank (correspondent) holds deposits owned by other banks (respondents) and provides payment and other services to those respondent banks. *See, e.g.,* Bank for Int'l Settlements, *Correspondent Banking,* at 9 (2016) (2016 BIS Report), *https://www.bis.org/cpmi/publ/d147.pdf.*

[11] The Bureau notes that some methods of sending cross-border money transfers, including remittance transfers, include elements of closed and open payment networks and some providers may also rely on both types of systems to facilitate different transfers. For example, the Bureau understands that banks may offer low-cost international fund transfers to its commercial clients through the use of the automated clearing house (ACH) system, and a minority of banks also offer international ACH to their consumer clients. *See* Bd. of Governors of the Fed. Reserve Sys., *Report to Congress on the Use of the ACH System and Other Payment Mechanisms for Remittance Transfers to Foreign Countries,* at 7 (May 2019), *https://www.federalreserve.gov/publications/2019-may-ach-report-other-payment-mechanisms.htm.*

[12] Public Law 111–203, 124 Stat. 1376 (2010).

[13] 15 U.S.C. 1693*o*–1(g)(2). As adopted in the Remittance Rule, the term ''remittance transfer'' means: ''[The] electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in [subpart A of Regulation E].'' The Rule's definition specifically excludes (1) transfer amounts of $15 or less and (2) certain securities and commodities transfers. 12 CFR 1005.30(e).

to it, including MSBs, banks, and credit unions.

The Bureau adopted subpart B of Regulation E to implement EFTA section 919 through a series of rulemakings that were finalized in 2012 and 2013, and which became effective on October 28, 2013.[14] The Bureau subsequently amended subpart B several times.[15] The Rule provides three significant consumer protections: It specifies the information that must be disclosed to consumers who send remittance transfers, including information related to the exact cost of a remittance transfer; it provides consumers with cancellation and refund rights; and it specifies procedures and other requirements for providers to follow in resolving errors.

III. Summary of the Rulemaking Process

A. 2019 Proposal

On December 3, 2019, the Bureau issued a notice of proposed rulemaking relating to the expiration of the temporary exception and the normal course of business safe harbor threshold, which was published in the **Federal Register** on December 6, 2019 (2019 Proposal).[16] In the 2019 Proposal, the Bureau proposed to increase the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually. The Bureau also proposed tailored exceptions to the Remittance Rule to address compliance challenges that insured institutions might face upon the expiration of the temporary exception on the ability of insured institutions to comply with the Rule's requirements to disclose the exchange rate and covered third-party fees. Specifically, with respect to the exchange rate, the Bureau proposed to adopt a new, permanent exception in the Remittance Rule that would permit insured institutions to estimate the exchange rate for a remittance transfer to a particular country if, among other things, the designated recipient will receive funds in the country's local currency and the insured institution made 1,000 or fewer remittance transfers in the prior calendar year to that country when the designated recipients received funds in the country's local currency. With respect to covered third-party fees, the Bureau proposed to adopt a new, permanent exception that would permit insured institutions to estimate covered third-party fees for a remittance transfer to a particular designated recipient's institution if, among other things, the insured institution made 500 or fewer remittance transfers to that designated recipient's institution in the prior calendar year.

Along with these amendments, the Bureau proposed to make several conforming changes in the existing Rule and related commentary. The 2019 Proposal proposed an effective date of July 21, 2020 for all these amendments. Finally, the 2019 Proposal sought comment on a permanent exception in the Rule (in § 1005.32(b)(1)) permitting providers to use estimates for transfers to certain countries and the process for adding countries to the safe harbor countries list maintained by the Bureau.

The comment period for the 2019 Proposal closed on January 21, 2020. The Bureau received approximately 100 comments and three *ex parte* communications from a trade association representing large bank remittance providers and a trade association representing credit unions, respectively. Nearly half of the comments were submitted by industry commenters, specifically banks and credit unions, their trade associations, and their service providers. Commenters also included a trade association representing MSBs, several consumer groups, a regional bank of the Federal Reserve System, a virtual currency company, and individuals.

Industry commenters were generally supportive of the Bureau's proposed changes to increase the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually. They were also generally supportive of the Bureau's proposal to adopt new tailored exceptions from the general requirement to disclose exact amounts in order to address the impact of the temporary exception's expiration on July 21, 2020, but some industry commenters also noted that while they generally supported the Bureau's proposal to address the impact of the expiration of the temporary exception, they also thought the Bureau's proposed amendments did not go far enough to preserve the use of the temporary exception. In contrast, consumer groups were opposed to the proposed changes.

There were approximately 60 comment letters submitted by individuals. Credit union members submitted nearly all of these letters and they expressed support for the 2019 Proposal. The Bureau also received one comment letter from an anonymous commenter who did not support the 2019 Proposal and one comment letter from an anonymous commenter who supported it.

Lastly, the Bureau notes that some of the comments the Bureau received raised issues that are beyond the scope of the 2019 Proposal. For example, a number of commenters that represented credit unions, their trade associations, and credit union members urged the Bureau to eliminate the Remittance Rule's cancellation rights or modify the existing requirements to enable consumers to waive their rights. To the extent that a comment was within the scope of the 2019 Proposal, the Bureau has considered it in adopting this final rule.

B. Other Outreach

Prior to the issuance of the 2019 Proposal, the Bureau received feedback regarding the Remittance Rule through both formal and informal channels. In addition, over the years, the Bureau has engaged in ongoing market monitoring and other outreach to industry and other stakeholders regarding the Remittance Rule. The following is a brief summary of some of this outreach.

Assessment and 2017–2018 RFIs

The Bureau conducted an assessment of the Remittance Rule (Assessment), as required pursuant to section 1022(d) of the Dodd-Frank Act.[17] In 2017, the Bureau issued a request for information (RFI) in connection with the Assessment, and received approximately 40 comment letters.[18] As referenced above, in October 2018, the Bureau published the results of the Assessment in the Assessment Report, providing insights into the effectiveness of the Rule and its provisions. Separately, in 2018, the Bureau issued a series of RFIs as part of a call for evidence to ensure the Bureau is fulfilling its proper and appropriate functions to best protect consumers, and received a total of approximately 34 comments on the Remittance Rule in response.[19]

2019 RFI

Based on comments and other feedback from various remittance transfer providers and their trade

[14] 77 FR 6194 (Feb. 7, 2012); as amended on 77 FR 40459 (July 10, 2012); 77 FR 50243 (Aug. 20, 2012); 78 FR 6025 (Jan. 29, 2013); 78 FR 30661 (May 22, 2013); and 78 FR 49365 (Aug. 14, 2013).

[15] 79 FR 55970 (Sept. 18, 2014), 81 FR 70319 (Oct. 12, 2016), and 81 FR 83934 (Nov. 22, 2016).

[16] 84 FR 67132 (Dec. 6, 2019).

[17] Section 1022(d) requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law and to publish a report of such assessment not later than five years after the rule or order's effective date. 12 U.S.C. 5512(d).

[18] 82 FR 15009 (Mar. 24, 2017). The comment letters are available on the public docket at *https://www.regulations.gov/document?D=CFPB-2017-0004-0001. See also* Assessment Report at 149.

[19] *https://www.regulations.gov/document?D=CFPB-2017-0004-0001.*

associations in response to the RFIs described above, as well as its own analysis, the Bureau published an RFI on April 20, 2019 (2019 RFI) [20] to seek information and data about the potential negative effects of the expiration of the temporary exception and potential options to address its impact. The 2019 RFI also sought information on possible changes to the current normal course of business safe harbor threshold in and whether an exception for ''small financial institutions'' may be appropriate.

IV. Legal Authority

Section 1073 of the Dodd-Frank Act created a new section 919 of EFTA requiring remittance transfer providers to provide disclosures to senders of remittance transfers, pursuant to rules prescribed by the Bureau. In particular, providers must provide a sender a written pre-payment disclosure containing specified information applicable to the sender's remittance transfer, including the amount to be received by the designated recipient. The provider must also provide a written receipt that includes the information provided on the pre-payment disclosure, as well as additional specified information.[21] In addition, EFTA section 919(d) directs the Bureau to promulgate rules regarding appropriate error resolution standards and cancellation and refund policies.

In addition to the Dodd-Frank Act's statutory mandates, EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of EFTA. The express purposes of EFTA, as amended by the Dodd-Frank Act, are to establish ''the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems'' and to provide ''individual consumer rights.'' [22] EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance. As described in more detail below, the changes herein are adopted pursuant to the Bureau's authority under EFTA section 904(a) and (c).

[20] 84 FR 17971 (Apr. 29, 2019).

[21] EFTA section 919(a); 15 U.S.C. 1693*o*–1(a).

[22] EFTA section 902(b); 15 U.S.C. 1693(b).

V. Section-by-Section Analysis

Section 1005.30 Remittance Transfer Definitions

30(f) Remittance Transfer Provider

30(f)(2) Normal Course of Business

EFTA section 919(g)(3) defines ''remittance transfer provider'' to be a person or financial institution providing remittance transfers for a consumer in the ''normal course of its business.'' [23] The Rule uses a similar definition.[24] It states that whether a person provides remittance transfers in the normal course of its business depends on the facts and circumstances, including the total number and frequency of transfers sent by the provider.[25] The Rule currently contains a safe harbor whereby a person that provides 100 or fewer remittance transfers in each of the previous and current calendar years is deemed not to be providing remittance transfers in the normal course of its business, and therefore is outside of the Rule's coverage.[26]

When the Bureau finalized the normal course of business 100-transfer safe harbor threshold in August 2012, it stated that it intended to monitor that threshold over time.[27] The Bureau acknowledged, among other things, that the administrative record contained little data on the overall distribution and frequency of remittance transfers to support treating any particular number of transactions as outside the normal course of business.[28] After explaining the limitations in the data it did have, the Bureau stated that it did not believe it could rely on the data received to describe the number of remittance transfers provided by ''typical'' entities or to identify a clear pattern in the distribution of providers by the number of transfers provided.[29] The Bureau concluded that the data collected at the time provided some additional support for the 100-transfer normal course of business safe harbor threshold, and that the threshold was ''not so low as to be meaningless.'' [30] The Bureau determined at that time that a normal course of business safe harbor threshold of 100 was high enough that persons would not risk exceeding the safe harbor based on making transfers for just two or three customers each month, while low enough to serve as a reasonable basis for identifying persons who occasionally provide remittance transfers, but not in the normal course of their business. The Bureau also noted that 100 transfers per year is equivalent to an average of approximately two transfers per week, or the number of transfers needed to satisfy the needs of a handful of customers sending money abroad monthly.[31]

In the 2019 Proposal, the Bureau proposed to raise the normal course of business safe harbor threshold from 100 remittance transfers to 500 remittance transfers, in response to feedback it has received over the years from banks, credit unions, and their trade associations in which these entities asserted that the 100-transfer threshold is too low. For reasons set forth herein, the Bureau is adopting this aspect of the proposal as proposed.

The Bureau's Proposal

The Bureau proposed to raise the normal course of business safe harbor threshold from 100 to 500 remittance transfers by proposing to revise part of existing § 1005.30(f)(2)(i). The proposed revision stated that a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person provided 500 or fewer transfers in the previous calendar year and provides 500 or fewer transfers in the current calendar year. The Bureau also proposed to revise part of existing § 1005.30(f)(2)(ii) regarding the current normal course of business safe harbor transition period to reflect the proposed 500-transfer normal course of business safe harbor threshold and the proposed effective date of July 21, 2020. Specifically, the proposed revision to § 1005.30(f)(2)(ii) stated that if, beginning on July 21, 2020, a person that provided 500 or fewer remittance transfers in the previous calendar year provides more than 500 remittance transfers in the current calendar year, and if that person is then providing remittance transfers for a consumer in the normal course of its business pursuant to § 1005.30(f)(1), the person has a reasonable period of time, not to exceed six months, to begin complying with subpart B of Regulation E. Further, the Bureau proposed to add new § 1005.30(f)(2)(iii) to address the transition period for persons qualifying for the normal course of business safe harbor. Proposed § 1005.30(f)(2)(iii) stated that if a person who previously provided remittance transfers in the normal course of its business in excess of the normal course of business safe harbor threshold set forth in

[23] EFTA section 919(g)(3); 15 U.S.C. 1693*o*–1(g)(3).

[24] *See* 12 CFR 1005.30(f)(1).

[25] Comment 30(f)–2.i.

[26] 12 CFR 1005.30(f)(2)(i).

[27] 77 FR 50243, 50252 (Aug. 20, 2012).

[28] *Id.* at 50251–52.

[29] *Id.*

[30] *Id.* at 50252.

[31] *Id.* at 50251.

§ 1005.30(f)(2) determines that, as of a particular date, it will qualify for the normal course of business safe harbor, it may cease complying with the requirements of subpart B of Regulation E with respect to any remittance transfers for which payment is made after that date. Proposed § 1005.30(f)(2)(iii) also provided that the requirements of EFTA and Regulation E, including those set forth in §§ 1005.33 and 1005.34, as well as the requirements set forth in § 1005.13, continue to apply to transfers for which payment is made prior to that date.

The Bureau also proposed changes to the existing commentary accompanying § 1005.30(f) to align the commentary with the proposed changes to existing § 1005.30(f)(2) and provide further clarification related to the proposed 500-transfer normal course of business safe harbor threshold. Specifically, the Bureau proposed to revise the last sentence in existing comment 30(f)–2.i to avoid potential conflict or confusion with the proposed normal course of business safe harbor threshold of 500 transfers. The Bureau also proposed to revise existing comments 30(f)–2.ii and iii regarding the normal course of business safe harbor and transition period by changing 100 to 500 throughout for consistency with the proposed changes to § 1005.30(f)(2)(i) and (ii). In addition, the Bureau proposed to add a sentence in comment 30(f)–2.ii stating that on July 21, 2020, the normal course of business safe harbor threshold in § 1005.30(f)(2)(i) changed from 100 transfers to 500 transfers, to incorporate the change in the commentary. The Bureau also proposed to renumber existing comment 30(f)–2.iv as 30(f)–2.iv.A (in order to add two additional examples, described below), revise the heading for this comment to make clear that it provides an example of the normal course of business safe harbor and transition period for the 100-transfer normal course of business safe harbor threshold that was effective prior to the proposed effective date of July 21, 2020, and change the verb tense from present to past throughout the example.

In addition, the Bureau proposed to add new comment 30(f)–2.iv.B to provide an example of how the normal course of business safe harbor applies to a person that provided 500 or fewer transfers in 2019 and provides 500 or fewer transfers in 2020. The Bureau also proposed to add new comment 30(f)–2.iv.C, which provides an example of the normal course of business safe harbor and transition period for the 500-transfer normal course of business safe harbor threshold that would be effective beginning on the proposed effective date of July 21, 2020. This proposed comment was based on the example in existing comment 30(f)–2.iv, with modifications to reflect the changes the Bureau proposed to § 1005.30(f)(2), which are discussed in detail above.

Finally, the Bureau proposed to add new comment 30(f)–2.v to explain a person's continued obligations under the Rule with respect to transfers for which payment was made before the person qualifies for the normal course of business safe harbor. The proposed comment stated that proposed § 1005.30(f)(2)(iii) addresses situations where a person who previously was required to comply with subpart B of Regulation E newly qualifies for the revised normal course of business safe harbor in proposed § 1005.30(f)(2)(i). It explained that proposed § 1005.30(f)(2)(iii) states that the requirements of EFTA and Regulation E, including those set forth in §§ 1005.33 and 1005.34 (which address procedures for resolving errors and procedures for cancellation and refund of remittance transfers, respectively), as well as the requirements set forth in § 1005.13 (which, in part, governs record retention), continue to apply to transfers for which payment is made prior to the date the person qualifies for the normal course of business safe harbor in § 1005.30(f)(2)(i). The proposed comment also explained that qualifying for the safe harbor in § 1005.30(f)(2)(i) likewise does not excuse compliance with any other applicable law or regulation. For example, if a remittance transfer is also an electronic fund transfer, any requirements in subpart A of Regulation E that apply to the transfer continue to apply, regardless of whether the person must comply with subpart B. Relevant requirements in subpart A of Regulation E may include, but are not limited to, those relating to initial disclosures, change-in-terms notices, liability of consumers for unauthorized transfers, and procedures for resolving errors.

The Bureau sought comment on its proposal to increase the normal course of business safe harbor threshold as well as on its proposed revisions and additions to the accompanying commentary.

Comments Received

Most commenters to the 2019 Proposal responded to the Bureau's proposed changes to the normal course of business safe harbor threshold. Industry commenters, including banks, credit unions, and trade associations, as well as a regional bank in the Federal Reserve System, individuals who identified themselves as credit union members, and one anonymous commenter generally supported the proposal to increase the normal course of business safe harbor threshold from 100 to 500 remittance transfers annually. The credit union members and about half of the industry commenters, including the credit unions and credit union trade associations, recommended a higher threshold of 1,000 transfers; one community bank trade association recommended 1,200 transfers. In contrast, consumer groups opposed the proposal and urged the Bureau instead to lower the current normal course of business safe harbor threshold.[32]

Similar to the feedback the Bureau has received on the normal course of business safe harbor threshold in the past, industry commenters stated that compliance costs related to the Remittance Rule have caused many credit unions and community banks that provide remittance transfers as an accommodation to their account-holding customers to limit the number of transfers they provide or exit the market altogether. Several of these commenters explained that for them, offering remittance transfer services is not a separate or profit-making line of business, and that many of them do not provide enough transfers to cover their compliance costs. These commenters also stated that the undue burden caused by complying with the Remittance Rule has led to consumer harm in the form of decreased access to remittance transfer services at credit unions and community banks because these entities have limited the number of transfers they provide or increased prices to cover their compliance costs.

The industry commenters and credit union members that recommended a normal course of business safe harbor threshold of 1,000 or 1,200 remittance transfers also generally supported the Bureau's proposal to raise the current threshold from 100 transfers annually to 500 transfers annually. These industry commenters, all of which were credit unions and credit union trade associations, stated that a 1,000-transfer normal course of business safe harbor threshold is more appropriate to alleviate burden for credit unions and would allow credit unions that stopped or limited providing remittance transfers to reenter the market or resume services. Several of these commenters

[32] The Bureau also received a letter from an anonymous commenter that generally opposed any changes to the Remittance Rule that would compromise transparency to the public and stated that any cost savings by institutions would not be passed on to consumers.

also asserted that banks and credit unions are not major players in the remittance market, and as such, raising the threshold to 1,000 transfers would result in a minimal impact on the total number of transfers that would be excluded from the Remittance Rule, which would mean that the consumer impact would also be minimal. One credit union trade association stated that providing fewer than 1,000 transfers is not enough to generate meaningful income for most credit unions. One credit union stated that a small increase to the normal course of business safe harbor threshold would only present transitional issues for entities that continue to experience steady organizational growth. The credit union members stated that remittance transfers are significant and popular services offered to credit union members and noted that credit unions believe that the current Remittance Rule is ''an unnecessary barrier'' to such service. The community bank trade association that recommended raising the normal course of business safe harbor threshold to 1,200 stated that a safe harbor at that threshold would ensure that consumers have access to remittance transfer services at community banks and would allow community banks to compete in the remittance market, thereby preserving it as a safe, convenient, secure, and reasonably priced option for consumers.

In short, the commenters that supported the Bureau's proposal stated that raising the normal course of business safe harbor threshold would ease compliance burden on institutions that provide a low volume of remittance transfers, many of which are credit unions and community banks, and would benefit consumers who are customers at these institutions, particularly those located in rural areas. The regional bank in the Federal Reserve System also stated that the Bureau's proposal would help ensure the engagement of all insured institutions, especially small to mid-size institutions that have occasional remittance transfer demands. Additionally, a few commenters suggested that consumers that are customers of entities that would newly qualify for the proposed normal course of business safe harbor would not necessarily lose their protections related to remittance transfers. For example, one bank trade association stated that based on their membership feedback, entities that are no longer subject to the Remittance Rule will still provide their customers with information about the fees associated with sending a remittance transfer and will also take steps to help consumers when there are errors related to their transfers. Relatedly, several other industry commenters, including a few credit union trade associations and one community bank trade association, stated that credit unions and community banks have strong connections to the communities they serve and that they exist to serve their customers. One of the credit union trade associations also stated that credit unions do not charge high fees or prevent consumers from having reliable information about their transactions.

In response to the Bureau's request for comment on basing the normal course of business safe harbor threshold on a metric other than the number of remittance transfers, one credit union trade association recommended a two-prong approach, whereby an entity would qualify for the safe harbor if it met either an asset-size threshold of $1 billion or a threshold of 1,000 remittance transfers. One bank commenter opposed using anything other than the number of remittance transfers, stating that using another metric, such as the percentage of an entity's customers that send remittance transfers, would be unduly burdensome to monitor.

A few commenters expressed general support for the Bureau's proposed commentary related to the normal course of business safe harbor transition period. One bank trade association recommended that the Bureau clarify that the current transition period provision in existing § 1005.30(f)(2)(ii) continue to apply to the Rule, as amended, so that when an entity exceeds the normal course of business safe harbor threshold, it will have six months to come into compliance (as set forth in the current Rule). However, one bank commenter suggested that for entities that cease to satisfy the requirements of the Rule's normal course of business safe harbor (and therefore must come into compliance with the Rule), the Bureau should adopt a transition period longer than six months. As noted above, the Bureau proposed to keep the transition period provision in existing § 1005.30(f)(2)(ii) unchanged.[33]

Another bank commenter responded to the Bureau's request for comment on whether the phrase ''payment is made'' is the appropriate standard on which to hinge various of the Remittance Rule provisions, including those related to the transition period for coming into compliance after ceasing to qualify for the normal course of business safe harbor, and stated that the Bureau should continue using the term as it is an easily understood term that is consistent with the current regulation. One bank and one credit union responded to the Bureau's request for comment on the proposed effective date of July 21, 2020 for the proposed normal course of business safe harbor threshold and agreed that July 21, 2020 should also be the effective date for that threshold.

Several industry commenters urged the Bureau to address coverage under the Remittance Rule using standards other than the normal course of business safe harbor threshold. One credit union trade association and one credit union suggested exempting credit unions entirely from the Rule, stating that the disclosure and error resolution requirements have caused credit unions to discontinue remittance transfer services due to the significant compliance costs, and that such an exemption would cultivate a competitive remittance market, given that only the largest and most technologically sophisticated institutions can afford to comply with the Rule. One trade association representing community banks and another representing credit unions recommended implementing a small financial institution exemption with an asset size threshold of $5 billion or $10 billion. One trade association that represents community banks and credit unions recommended an exemption for recurring remittance transfers and for transfers under a certain dollar amount, such as $10,000.

As noted above, consumer groups were opposed to the Bureau's proposal to raise the normal course of business safe harbor threshold. Consumer groups stated that under the current 100-transfer normal course of business safe harbor threshold, nearly all depository institutions are not required to comply with the Remittance Rule, and that this fact alone justifies implementing a lower threshold.[34] These consumer

[33] As described in detail above, the 2019 Proposal would have provided that if a person that provided 500 or fewer remittance transfers in the previous calendar year provides more than 500 remittance transfers in the current calendar year, and if that person is then providing remittance transfers for a consumer in the normal course of its business pursuant to § 1005.30(f)(1), then the person has a reasonable period of time, which must not exceed six months, to begin complying with the Remittance Rule.

[34] Consumer groups specifically cited the Assessment Report, which states that at the time of the report, approximately 80 percent of banks and 75 percent of credit unions that offer remittance transfers were below the 100-transfer normal course of business safe harbor threshold.

groups stated that Congress intended the term ''remittance transfer provider'' to have broad coverage and the normal course of business exemption to be narrow. These commenters stated that an exemption that covers three-quarters of banks and credit unions is not narrow or limited in scope, which contradicts Congress's intent and the Bureau's conclusion from 2012 when it finalized the 100-transfer normal course of business safe harbor threshold. These commenters stated that a 500-transfer normal course of business safe harbor threshold would bring the safe harbor even closer to a complete depository institution exemption and therefore would be more at odds with Congress's intent and the Bureau's earlier determination.

Further, consumer groups stated that the Bureau's proposal would harm consumers by excluding tens or hundreds of thousands of remittance transfers from the Rule's protections, including a consumer's right to accurate disclosures and error resolution. These commenters added that losing these protections would be especially critical for transfers provided by banks, given that bank transfers tend to be higher-value transfers, which would in turn mean that more of the consumer's money would be at stake if there was an error or the money was lost. These commenters stated that the Bureau recognized this type of risk in 2012 when it rejected industry suggestions to exempt all open network transfers above a certain dollar amount, but that now the Bureau appeared to have changed its position without explanation.

Consumer groups also stated that exempting most depository institutions from the Rule's disclosure requirements by raising the normal course of business safe harbor threshold would harm covered providers because the exempted entities would be permitted to appear to offer less expensive and faster remittance services than those offered by the covered providers. In addition, commenters noted that consumers would not be able to compare prices or easily identify which providers were required to comply with the Rule and offer its protections. Consumer groups also stated that any downward price pressure resulting from transparency could be reduced because so many institutions would no longer be providing the required disclosure information.

Consumer groups also stated that the Bureau did not provide data to support the assertion that a 500-transfer normal course of business safe harbor threshold may be more appropriate to identify persons who occasionally provide remittance transfers, but not in the normal course of business. These commenters noted that the Bureau dismissed suggestions to raise the normal course of business safe harbor threshold to a number higher than 100 in 2012 when it finalized the current threshold, and that the Bureau has not adequately explained or justified its change in position. In addition, these commenters stated that a threshold of 500 remittance transfers annually (or an average of about ten transfers per week) sounds quite normal, not occasional. These commenters added that the issue of the normal course of business safe harbor threshold is whether entities offer remittance transfers normally, not whether they are trying to attract new customers or provide services to current ones. Moreover, consumer groups stated that the Bureau's claim that compliance costs are disproportionate for entities providing 500 or fewer transfers is not supported by the findings in the Assessment Report and does not justify the proposal because the concept of normal course of business does not tie to an entity's cost of doing business. These commenters also noted that the Assessment Report found that prices have decreased since the Rule took effect, and that preliminary analysis of statistically robust data sets suggests that the Rule may have contributed to the price decline.

Finally, consumer groups stated that the Bureau's proposal conflates the expiring temporary exception that allows insured institutions to provide estimates in certain circumstances with the proposed normal course of business safe harbor threshold that would exempt most of these institutions from coverage altogether. These commenters stated that the fact that expanding the normal course of business safe harbor would ease the burden of the expiring temporary exception is immaterial because the cost an entity might bear due to the expiration of the temporary exception has nothing to do with whether the entity provides remittance transfers in the normal course of business. These commenters noted that the temporary exception is not widely used by the entities the Bureau proposed to exempt by expanding the normal course of business safe harbor and cited bank Call Report data indicating that less than 10 percent of the entities providing between 100 and 500 transfers per year use the temporary exception today.

The Final Rule

For the reasons set forth herein, the Bureau is finalizing the changes to § 1005.30(f) and related commentary as proposed. Specifically, the Bureau is adopting revisions to existing § 1005.30(f)(2)(i) and (ii) and comments 30(f)–2.i through 2.iv, and adding new § 1005.30(f)(iii) and new comments 30(f)–2.iv.B, 30(f)–2.iv.C, and 30(f)–2.v, as proposed.

As discussed below, the Bureau believes that the term ''normal course of business'' is ambiguous. Since the adoption of the current normal course of business safe harbor in 2012, the Bureau has conducted outreach and research and met with industry stakeholders and consumer groups to better understand the remittance transfer market. Based on its experience and expertise, as well as the data and information gained since 2012, the Bureau concludes that a more appropriate understanding of ''normal course of business'' that better reflects Congress's purpose in writing this standard should take into consideration a multitude of factors including disproportionate costs that entities may encounter because of the Remittance Rule; the frequency and regularity of remittance transfers; whether transfers are offered as an accommodation for customers; and a consideration of the extent of consumer harm that could arise from excluding certain providers. Applying these factors, and after considering the comments received, the Bureau concludes that a 500-transfer normal course of business safe harbor threshold better serves the purposes of the normal course of business provision in the statutory definition of remittance transfer provider. The Bureau concludes that this provision is intended to balance several goals, including excluding from coverage providers that do not normally send remittance transfers and would thus bear disproportionate costs to do so, while preserving coverage of providers that service the vast majority of consumers and are more equipped to bear the costs of compliance.

When the Bureau finalized the current 100-transfer normal course of business safe harbor threshold in August 2012, the Bureau did not have the benefit of knowing the information the Bureau knows today regarding industry's experience in the remittance transfer market since the Remittance Rule went into effect in October 2013. As described in the August 2012 final rule, the Bureau primarily considered the frequency of remittance transfers provided when determining the appropriate threshold for whether an entity provides transfers in the normal course of its business. The Bureau stated at the time that it believed that:

[T]he inclusion of the phrase ''normal course of business'' in the statutory definition of ''remittance transfer provider'' was meant to exclude persons that provide remittance transfers on a limited basis. As a result, the fact that a person provides only a small number of remittance transfers can strongly indicate that the person is not providing such transfers in the normal course of its business.[35]

The Bureau also stated that it was ''concerned that a person who provides more than 100 transfers in a calendar year is more likely than other persons to be providing remittance transfers in the normal course of its business, such as by making transfers generally available to its customers, and by providing them more frequently,'' and that it did not have ''industry-wide information linking commenters' suggested higher thresholds either to the definition of 'normal course of business,' or to other factors that commenters suggested were relevant, such as the cost of compliance'' with the Rule.[36]

After more than six years of outreach to industry and other stakeholders examining data and information, including for purposes of the Assessment, the Bureau has a better understanding of the various considerations, as described above, that bear on whether an entity is providing remittance transfers in the normal course of its business and are therefore relevant in determining the appropriate threshold for provision of a safe harbor. In particular, the Bureau is now aware of the disproportionate compliance burden borne by certain entities that provide a limited number of remittance transfers per year. As discussed in the Assessment Report, entities incur ongoing costs, such as those attributed to developing information and compliance systems, training staff, and contracting with other institutions to fulfill certain Rule requirements, when coming into and remaining in compliance with the Remittance Rule.[37] These costs are fixed, in the sense that entities must incur them to provide any remittance transfers that comply with the Remittance Rule. Institutions that provide relatively small numbers of remittance transfers (which tend to be smaller institutions) have fewer transactions to produce revenues through which to recover the fixed compliance costs associated with the Rule.[38] Therefore, based on this information and the feedback from industry over the years regarding compliance costs, including in response to the 2019 Proposal, the Bureau has better information than it did in 2012 to understand the impact of the Rule and recognizes that certain entities that make a limited number of remittance transfers per year as an accommodation to their customers face challenges complying with the Remittance Rule. The Bureau has determined that the term ''normal course of business'' is reasonably interpreted to take account of this burden.

Applying these and other relevant considerations to the normal course of business safe harbor threshold, the Bureau concludes that raising the normal course of business safe harbor threshold from 100 to 500 remittance transfers annually appropriately implements, and is a reasonable interpretation of, the statutory definition of remittance transfer provider as a person or financial institution providing remittance transfers in the normal course of its business, whether or not the consumer holds an account with such a person.[39] As stated in the 2019 Proposal, the Bureau believes that a threshold of 500 transfers is more appropriate to identify persons who occasionally provide remittance transfers, but not in the normal course of their business. Five hundred transfers annually is equivalent to an average of approximately 10 transfers per week, which the Bureau believes allows entities to send a relatively limited number of transfers without having to incur the costs of developing and implementing processes and procedures to comply with the Rule or the costs of continued compliance with the Rule. The Bureau believes that, at this volume, entities are generally offering remittance transfers as an accommodation for their account-holding customers.

The Bureau also believes that a 500-transfer normal course of business safe harbor threshold will help ensure participation in the remittance market of all entities, including small and mid-size banks and credit unions that have occasional remittance transfer demands, while minimally impacting consumers. Based on the feedback from industry commenters on their experience in the remittance transfer market and the costs associated with providing remittance transfers, the Bureau understands that an entity that provides a low number of remittance transfers may experience compliance challenges because the limited number of transfers it provides is insufficient to justify, and the revenues from those transfers are not enough to cover, the level of fixed and variable compliance costs necessitated by the Remittance Rule. As noted above, many of the industry commenters that supported raising the normal course of business safe harbor threshold indicated that compliance costs related to the Remittance Rule have caused many credit unions and community banks that provide remittance transfers as an accommodation to their account-holding customers to limit the number of transfers they provide or exit the market altogether. Several of these commenters also stated that they would consider reentering the market or resuming offering remittance transfer services if the Bureau raised the normal course of business safe harbor threshold because they would not have to bear the costs discussed above. In the Assessment Report, the Bureau explained that it did not find evidence that, on net, banks or credit unions ceased or limited providing remittance transfers because the normal course of business safe harbor threshold was too low.[40] To the extent this has occurred, however, the Bureau expects that raising the normal course of business safe harbor threshold from 100 to 500 remittance transfers annually will encourage at least some entities to reenter the market or resume offering remittance transfer services, which would benefit consumers and allow smaller entities to compete with other providers.

Further, the Bureau believes that raising the normal course of business safe harbor threshold to 500 remittance transfers appropriately balances the goals of ensuring that most transfers remain covered, and that the number of affected consumers overall remain relatively small. As discussed in part VI below, the data now available through Call Reports[41] indicate that a substantial proportion of banks and credit unions make between 101 and 500 remittance transfers per year, although their percentage of the overall annual volume of remittance transfers is quite small.[42] Specifically, based on the Bureau's analysis of the 2018 Call

[35] 77 FR 50244, 50249–50 (Aug. 20, 2012).

[36] *Id.* at 50251.

[37] Assessment Report at 117–20.

[38] *See id. See also* 84 FR 17971, 17975 (Apr. 29, 2019) (Remittance RFI 2019).

[39] EFTA section 919(g)(3); 15 U.S.C. 1693*o*–1(g)(3).

[40] Assessment Report at 133–35.

[41] Banks and credit unions are required to submit quarterly ''Call Reports'' by the Federal Financial Institutions Examination Council (FFIEC) and the National Credit Union Administration (NCUA), respectively. For a more detailed description of these reporting requirements, *see* Assessment Report at 24.

[42] As used in this document, ''between 101 and 500'' means 101 or more and 500 or fewer—that is, above the current safe harbor threshold but at or below the new 500-transfer normal course of business safe harbor threshold.

Report data,[43] raising the threshold from 100 to 500 transfers would remove approximately 414 banks and 247 credit unions (which represent 54.6 percent and 62.4 percent of such entities currently covered by the Remittance Rule, respectively). These entities account for 0.83 percent (92,623) of bank transfers, and 6.3 percent (49,347) of credit union transfers, for a total of approximately 141,970 transfers that would no longer be covered by the Rule.[44] Banks overall provided 11.1 million transfers and credit unions provided 790,000 transfers, while MSBs provided 325 million transfers in 2017.[45] Therefore, given that the combined number of bank and credit union transfers that would no longer be covered at a threshold of 500 annual transfers represents only a minimal percentage of all remittance transfers made annually—specifically, less than one-tenth of one percent (0.054 percent)—and based on an extrapolation of this data,[46] the Bureau believes that the total number of consumers that might be impacted by the revised normal course of business safe harbor threshold is relatively small.

The Bureau also concludes, based on the feedback of several industry commenters, that consumers that are customers of the entities that will newly qualify for the revised normal course of business safe harbor threshold might still receive protections similar to those provided under the Remittance Rule. For instance, as noted above, one bank trade association stated that entities that are no longer subject to the Remittance Rule will still provide their customers with information about the fees associated with sending a remittance transfer and will also take steps to help consumers when there are errors related to their transfers. In addition, several other industry commenters, including a few credit union trade associations and one community bank trade association, noted their strong connections to the communities they serve and stated that they exist to serve their customers. One of the credit union trade associations stated that credit unions provide reliable information about remittance transfers and charge reasonable rates.

Further, the Bureau recognizes that raising the normal course of business safe harbor threshold to 500 remittance transfers annually will address compliance challenges separate from the compliance challenges related to the expiration of the temporary exception that the Bureau is addressing in the changes it is adopting in § 1005.32, discussed below. As explained above, the Bureau believes that a 500-transfer normal course of business safe harbor threshold better serves the purposes of the normal course of business provision in the statutory definition of remittance transfer provider and is therefore appropriate.

The Bureau declines at this time to raise the normal course of business safe harbor threshold to a number higher than 500 remittance transfers, as the credit union members and a number of industry commenters recommended. As noted above and based on the discussion herein, the Bureau believes that a threshold of 500 transfers is more appropriate to identify persons who occasionally provide remittance transfers, but not in the normal course of their business. As discussed in the 2019 Proposal, the Bureau proposed a 500-transfer normal course of business safe harbor threshold because it believed that raising the threshold to 500 transfers would appropriately implement the purposes of EFTA section 919, including the statutory definition of remittance transfer provider (and its normal course of business provision), by helping to reduce burden for banks and credit unions that provide transfers only as an accommodation to their customers, thereby ensuring that banks and credit unions continue to offer the service to benefit consumers and do not bear a disproportionate cost to do so. The proposed threshold was based on limited information, and as such, in the 2019 Proposal, the Bureau requested data or other evidence that would have assisted it in determining what number would be most appropriate for the normal course of business safe harbor threshold. The Bureau did not receive data or other evidence indicating that a specific higher number would have been a more appropriate normal course of business safe harbor threshold, and as noted above, the Bureau believes a 500-transfer threshold is a more appropriate threshold, after consideration of the multitude of factors noted above as well as the comments received. For these reasons, the Bureau declines at this time to raise the normal course of business safe harbor threshold to a number other than 500 transfers annually.

The Bureau is also retaining the maximum time period allowed for a person to come into compliance with the Remittance Rule as ''not to exceed six months'' after the person is deemed to be providing transfers in the normal course of business. As noted above, an industry commenter requested that the Bureau clarify that the existing transition period provision in § 1005.30(f)(2)(ii) continue to apply so that when an entity exceeds the threshold, it has six months to come into compliance. Another industry commenter suggested making the transition period for entities that qualified for the normal course of business safe harbor threshold but then exceed the threshold (and therefore must comply with the Remittance Rule) at least six months. The Bureau believes that the transition period is sufficiently clarified in the changes the Bureau is finalizing in § 1005.30(f)(2)(ii) and (iii) as well as the accompanying commentary, and therefore declines to make additional changes. The Bureau also declines to further extend the transition period because the Bureau is not persuaded that a longer transition period is necessary.

Further, the Bureau is keeping the phrase ''payment is made.'' As discussed in the 2019 Proposal, the Bureau noted that existing language in § 1005.30(f)(2)(ii) regarding the six-month transition period that a person has to come into compliance with the Rule, as well as the proposed language in § 1005.30(f)(2)(iii) regarding the transition period for a person that qualifies for the normal course of business safe harbor, both peg their requirements on the phrase ''payment is made.'' The Bureau also noted that the phrase ''payment is made'' is used numerous times throughout the Rule and believed that it provided a clear and consistent test as to whether any particular remittance transfer is subject to the Rule. The Bureau solicited comment on this aspect of the proposal, and as noted above, one industry commenter responded to this issue and stated that the Bureau should continue using the phrase as it is easily understood and consistent with the current regulation. Lastly, the Bureau did not receive any comments

[43] Banks and credit unions continue to update their Call Reports over time, so these numbers are current based on the Call Reports as archived in November 2019 following the December 2019 NPRM.

[44] The 414 banks account for 1.98 percent of the $101 billion in remittance transfers provided by banks in 2018. Credit unions do not report the dollar volume of remittance transfers on their Call Reports.

[45] In the Assessment Report, the Bureau estimated the number of remittance transfers in 2017 to be 325 million (see Assessment Report at 63–64) and that more than 95 percent of transfers were provided by MSBs in 2017. The Bureau does not have an estimate of the total transfers in 2018 but assumed that 95 percent of transfers were provided by MSBs in 2018 to calculate this proportion.

[46] The Call Report data track the number of remittance transfers, not the number of consumers. Remittance transfer providers may provide transfers to the same consumer multiple times per year, and consumers may use more than one provider in a year. The number of transfers gives an upper bound for the number of consumers that may be affected by the new normal course of business safe harbor threshold.

suggesting changes to the other proposed revisions to the commentary accompanying § 1005.30(f), and as such, the Bureau is adopting them as proposed.

Other approaches suggested by commenters. The Bureau also declines to base the normal course of business safe harbor threshold on a standard other than the number of remittance transfers. As noted above, one industry commenter recommended a two-prong approach, whereby an entity would qualify for the normal course of business safe harbor if it met either an asset-size threshold of $1 billion or a remittance transfer threshold of 1,000. Another industry commenter opposed using any standard other than the number of remittance transfers, stating that using another metric, such as the percentage of an entity's customers that send remittance transfers, would be unduly burdensome to monitor. The Bureau agrees that basing the normal course of business safe harbor threshold on something other than the number of transfers would introduce complexity. In addition, the Bureau believes that a normal course of business safe harbor provides the most certainty if it is based on a bright-line measure that permits entities to identify easily whether they qualify, especially if it is a measure with which industry is already familiar.

1005.32 Estimates

As discussed in part II above, a significant consumer protection provided by the Remittance Rule is the requirement that remittance transfer providers disclose certain information to consumers that send remittance transfers. Relatedly, a significant consumer protection established by EFTA section 919 is that remittance transfer providers generally must disclose (both prior to and at the time the consumer pays for the transfer) the exact exchange rate and the amount to be received by the designated recipient of a remittance transfer.[47]

Accordingly, the Rule generally requires that providers disclose to senders the exact amount of currency that the designated recipient will receive. Existing EFTA section 919 and § 1005.32 of the Rule, however, set forth several exceptions to this general requirement, including the temporary exception in existing § 1005.32(a). As such, the Bureau proposed to provide two new permanent, tailored exceptions in light of the expiration of the temporary exception in existing § 1005.32.

32(a) Temporary Exception for Insured Institutions

As noted above, EFTA section 919 sets forth a temporary exception that permits certain financial institutions to disclose estimates instead of exact amounts to consumers under certain circumstances until July 21, 2020. The Bureau implemented the temporary exception in § 1005.32. Section 1005.32(a)(1) provides that a remittance transfer provider may give estimates in compliance with § 1005.32(c) for the exchange rate (if applicable), covered third-party fees, and certain other disclosure information if the provider meets three conditions: (1) The provider must be an insured institution; (2) the provider must not be able to determine the exact amounts to be disclosed for reasons beyond its control; and (3) the transfer generally must be sent from the sender's account with the insured institution. Section 1005.32(a)(2) provides that the temporary exception shall expire on July 21, 2020. Section 1005.32(a)(3) provides that insured depository institutions, insured credit unions, and uninsured U.S. branches and agencies of foreign depository institutions are considered ''insured institutions'' for purposes of the temporary exception. Importantly, MSBs are not ''insured institutions'' for purposes of the temporary exception.

EFTA section 919 expressly limits the length of the temporary exception to July 21, 2020, and this rule cannot and does not change that fact. However, this final rule discusses this provision as background to the two new exceptions in § 1005.32(b)(4) and (5) the Bureau is adopting in this final rule to provide tailored exceptions to address compliance challenges that insured institutions may face in certain circumstances upon the expiration of the temporary exception and to preserve consumers' access to certain remittance transfers.

Challenges of Insured Institutions in Disclosing Exact Amounts

In 2012, when the Bureau adopted § 1005.32(a), it stated the following in the notice of final rulemaking:

> Congress specifically recognized that it would be difficult for financial institutions to meet certain disclosure requirements with regard to open network transactions and tailored a specific accommodation to allow use of reasonably accurate estimates for an interim period until financial institutions can develop methods to determine exact disclosures, such as fees and taxes charged by third parties.[48]

As discussed in part II above, banks and credit unions have predominantly utilized an ''open network'' payment system made up of the correspondent banking network to send remittance transfers on behalf of consumers, and most banks and credit unions only maintain a relatively small number of correspondent banking relationships. As such, in many cases involving remittance transfers sent via the correspondent banking network, the sending institution must find a chain of one or more intermediary financial institutions to transmit funds from the sending institution to the designated recipient's institution.

There are two basic ways such a chain works where the originating (sending) institution has no correspondent banking relationship with the designated recipient's institution: (1) The ''serial'' method, and (2) the ''cover'' method (also known as the ''split and cover'' method).[49] Sending a remittance transfer using the serial method means that the payment instructions are transferred, and the transferred funds are settled,[50] one step at a time between each of the financial institutions in the transmittal route. Each connected pair of financial institutions in the transmittal route have a correspondent banking relationship with each other, which enables fund settlement.[51] By current market practice, each intermediary financial institution typically deducts a fee from the payment amount, which results in the recipient of the payment not receiving the full amount of the original payment order.[52] Sending a remittance transfer using the cover method means that the payment information is conveyed from the sending institution to the designated recipient's institution, while settlement is handled separately through correspondent banks.[53] Further, current market practice is such that correspondent banks typically do not deduct transaction fees from payments sent using the cover method.[54]

[47] 15 U.S.C. 1693*o*–1(a)(1) and (2).

[48] 77 FR 6194, 6208 (Feb. 7, 2012).

[49] *See* 2016 BIS Report at 33–34.

[50] ''Settlement'' generally refers to the ''discharge[ing of] obligations in respect of funds or securities transfers between two or more parties.'' Bank for Int'l Settlements, *A glossary of terms used in payments and settlement systems,* at 45 (2003), *https://www.bis.org/cpmi/glossary_030301.pdf.*

[51] *Id.* at 34.

[52] *Id.* at 37.

[53] Every cross-border money transfer, including remittance transfers, sent via the correspondent banking network has two components: The payment information and the settlement instruction. Whereas these two components travel together when using the serial method, the cover method separates the payment information from the settlement instructions.

[54] 2016 BIS Report at 37.

As discussed above, the temporary exception permits insured institutions to disclose estimates (rather than exact amounts) of the exchange rate and covered third-party fees (and other amounts that have to be estimated because the exchange rate and covered third-party fees are estimated). With respect to the exchange rate, insured institutions and their trade associations have reported to the Bureau that because exchange rates fluctuate, sending institutions comply with the requirement to disclose exact exchange rates by ''fixing'' the exchange rate at the time a sender requests a remittance transfer. They do this by converting the funds to the applicable foreign currency up-front themselves, or by using their correspondent bank or third-party service provider (instead of having an intermediary financial institution or the designated recipient's institution perform the foreign currency conversion). Insured institutions may face a number of hurdles with respect to converting funds to certain currencies up-front. In such cases, they may rely on the temporary exception with respect to the disclosure of the exchange rate.[55]

With respect to covered third-party fees, insured institutions and their trade associations have told the Bureau that if banks and credit unions send remittance transfers using the serial method (where sending institutions do not have a correspondent relationship with all of the financial institutions in the remittance transfer's transmittal route), they cannot control or even know what transaction fees another financial institution in the payment chain imposes without having a correspondent relationship with that financial institution. As such, they rely on the temporary exception with respect to the disclosure of covered third-party fees.

Recent market developments and potential solutions. In the Assessment Report, the Bureau observed that the remittance market has undergone substantial change since the Rule became effective. Specifically, the Assessment Report described several developments regarding the growth and incorporation of innovative technologies by providers of cross-border money transfers and other companies that support such providers.[56]

The Bureau has continued to monitor the remittance transfer market since the publication of the Assessment Report and observes that most of these developments continue to progress. Examples include: (1) The continued growth and expanding functionality of the Society for Worldwide Interbank Financial Telecommunication (SWIFT)'s ''global payment innovation'' (gpi) tracking product, which can increase the amount of up-front information available to sending institutions, and the expansion of the major payment card networks' capacity to support cross-border payments;[57] (2) the continued growth of ''fintech'' nonbank remittance transfer providers and their further expansion into partnerships and other relationships with banks and credit unions, which allow such entities to tap into the closed network payment systems that nonbank remittance transfer providers have developed;[58] and (3) the continued growth and expanding partnerships of virtual currency companies, such as Ripple, which offer both a payments messaging platform to support cross-border money transfers as well as a virtual currency, XRP, which can be used to effect settlement of those transfers.[59]

These developments suggest that in the future there may be means by which banks and credit unions could reduce their reliance on estimates, but there are limits on the degree to which the developments can solve the problem. All of the developments apply elements of a closed network payment system to cross-border money transfers sent by banks and credit unions. As discussed in part II above, in a closed network payment system, a single entity generally exerts a high degree of end-to-end control over a transaction. This control generally facilitates standardization and uniformity over terms, conditions, and processes to which participants in a closed network payment system must adhere. That standardization and uniformity, in turn, can provide a great deal of certainty to all participants in such a system as to the terms and conditions that will apply to individual transactions within that system.

To the degree banks and credit unions increase their reliance on closed network payment systems for sending remittance transfers and other cross-border money transfers, the Bureau notes that this could result in greater standardization and ease by which sending institutions can know exact covered third-party fees and exchange rates. The Bureau also believes that expanded adoption of SWIFT's gpi product or Ripple's suite of products could similarly allow banks and credit unions to know the exact final amount that recipients of remittance transfers will receive before they are sent.

However, based on the Bureau's market monitoring and experience as well as feedback the Bureau has received from banks, credit unions, and their trade associations regarding the impending expiration of the temporary exception, the Bureau in the 2019 Proposal stated that it did not believe that it was likely in the short-to-medium term that the developments described above would be able to fully eliminate reliance on the correspondent banking network as the predominant method for banks and credit unions to send remittance transfers. There are thousands of financial institutions worldwide that could receive remittance transfers with new financial institutions being added to the network (or leaving the market) on regular basis. If, as noted above, the different approaches described above share the similarity of replicating some elements of a closed network payment system, the approaches likely would need to enroll all or most of those financial institutions into their platforms to offer banks and credit unions up-front certainty when sending transfers for which they currently rely on the temporary exception. It may be costly, excessively time-consuming, or otherwise difficult to enroll all or even most of these institutions, especially the smaller ones. Accordingly, the Bureau proposed in 2019 to provide tailored permanent exceptions that would allow insured institutions to estimate, as applicable, the exchange rate, covered third-party fees, and other disclosure information impacted by the estimation of those amounts, to address compliance challenges that insured institutions may face in certain circumstances upon the expiration of the temporary exception

[55] Section 1005.32(b) also contains other exceptions that permit the estimation of the exchange rate in certain circumstances.

[56] Assessment Report at 97–106.

[57] SWIFT provides financial messaging services that support a large share of all cross-border interbank payments sent via correspondent banks. *See, e.g.,* Press Release, SWIFT, *SWIFT enables payments to be executed in seconds* (Sept. 23, 2019), *https://www.swift.com/news-events/press-releases/swift-enables-payments-to-be-executed-in-seconds;* John Adams, *Small cross-border deals play a big role for Visa, Mastercard,* PaymentsSource (May 21, 2019), *https://www.paymentssource.com/news/small-cross-border-deals-play-a-big-role-for-visa-mastercard.*

[58] *See, e.g.,* Zoe Murphy, *TransferWise launches TransferWise for Banks in the U.S. with Novo,* Tearsheet (Sept. 26, 2019), *https://tearsheet.co/new-banks/transferwise-launches-transferwise-for-banks-in-the-u-s-with-novo/.*

[59] *See, e.g.,* Press Release, Ripple, *Ripple Announces Strategic Partnership with Money Transfer Giant, MoneyGram* (June 17, 2019), *https://www.ripple.com/insights/ripple-announces-strategic-partnership-with-money-transfer-giant-moneygram/;* Sharon Kimathi, *PNC becomes first US bank on RippleNet,* FinTech Futures (Aug. 29, 2019), *https://www.fintechfutures.com/2019/08/pnc-becomes-first-us-bank-on-ripplenet/.*

and to preserve consumers' access to certain remittance transfers.

Comments Received

Several trade associations and one bank suggested alternatives to proposed § 1005.32(b)(4) and (5) in determining whether insured institutions can estimate the exchange rate or covered third-party fees, respectively. One bank opposed proposed § 1005.32(b)(4) and (5) and instead encouraged the Bureau to make the temporary exception permanent. One trade association representing community banks opposed proposed § 1005.32(b)(4) and (5) and urged the Bureau to utilize its EFTA section 904(c) authority to exempt insured institutions from providing exact exchange rates and covered third-party fees, allowing them to continue to rely on estimates in their disclosures when they are unable to determine accurate information, without attaching a threshold to the exceptions. One credit union and one trade association representing credit unions recommended that the Bureau consider simplified exceptions that treat a sending institution's reliance on exchange rate and covered third-party fee amounts provided by its correspondent bank as sufficient for disclosure purposes. Another trade association urged the Bureau to provide an alternative basis under which an insured institution can rely upon for estimating the exchange rates or covered third-party fees even if the institution exceeds the volume thresholds. For example, this trade association indicated that the Bureau could require additional recordkeeping by insured institutions in the event that they rely upon proposed § 1005.32(b)(4) or (5) after exceeding the thresholds in the prior calendar year.

The Final Rule

As discussed above, the temporary exception will expire on July 21, 2020, and this final rule cannot and does not change that fact. As discussed in the 2019 Proposal, EFTA section 919 expressly limits the length of the temporary exception to July 21, 2020. As such, the exception will expire on July 21, 2020.

For similar reasons, this final rule does not adopt provisions that would replicate the temporary exception, as one trade association commenter and one bank commenter suggested the Bureau should do.[60] This final rule adopts the two new exceptions in § 1005.32(b)(4) and (5) generally as proposed, to address compliance challenges that insured institutions may face in certain circumstances upon the expiration of the temporary exception and to preserve consumers' access to certain remittance transfers.

Except as discussed in the section-by-section analysis of § 1005.32(b)(5) below, this final rule also does not adopt an alternative basis under which an insured institution can rely upon for estimating the exchange rates or covered third-party fees even if the institution exceeds the volume thresholds set forth in § 1005.32(b)(4) and (5). This final rule does not adopt the alternative basis suggested by the trade association commenter that the Bureau require additional recordkeeping by insured institutions in the event that they rely upon proposed § 1005.32(b)(4) or (5) after exceeding the thresholds in the prior calendar year. The Bureau does not believe this alternative basis is sufficiently objective to be used to determine if an insured institution is in compliance with the Remittance Rule. The Bureau believes that the exceptions in § 1005.32(b)(4) and (5) are better approaches in that these exceptions will create bright-line thresholds to estimating exchange rates and covered third-party fees and that the Bureau's exceptions are better tailored to address the problems faced by institutions in determining exact amounts. The Bureau believes that the clarity of the two new exceptions in § 1005.32(b)(4) and (5) are more likely than the suggested alternative to reduce uncertainty and promote compliance.

32(b) Permanent Exceptions

32(b)(4) Permanent Exception for Estimation of the Exchange Rate by an Insured Institution

Proposed § 1005.32(b)(4) provided that insured institutions may estimate the exchange rate (and other disclosure information that depend on the exchange rate) that must be provided in the disclosures required by §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2) in certain circumstances. This proposed exception was designed to provide a tailored permanent exception to address compliance challenges that insured institutions may face in certain circumstances upon the expiration of the temporary exception and to preserve consumers' access to certain remittance transfers. For reasons set forth herein, the Bureau is adopting the proposed exception generally as proposed.

The Bureau's Proposal

Proposed § 1005.32(b)(4)(i) provided that for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for a remittance transfer to a particular country in accordance with § 1005.32(c) for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii) if the designated recipient of the remittance transfer will receive funds in the country's local currency and all of the following conditions are met: (1) The remittance transfer provider is an insured institution as defined in § 1005.32(a)(3); (2) the insured institution cannot determine the exact exchange rate for that particular remittance transfer at the time it must provide the applicable disclosures; (3) the insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency; and (4) the remittance transfer generally is sent from the sender's account with the insured institution.

Proposed § 1005.32(b)(4) applied only if the designated recipient of the remittance transfer receives funds in the country's local currency. Proposed § 1005.32(b)(4)(i) also generally applied to the following disclosures set forth in § 1005.31(b)(1)(iv) through (vii) respectively: (1) The exchange rate (as applicable); (2) if ''covered third-party fees'' as defined in § 1005.30(h) are imposed, the total amount that will be transferred to the recipient inclusive of the covered third-party fees; (3) the amount of any covered third-party fees; and (4) the amount that will be received by the designated recipient (after deducting any covered third-party fees). Proposed § 1005.32(b)(4)(ii) provided, however, that the total amount that will be transferred to the recipient inclusive of covered third-party fees, the amount of covered third-party fees, and the amount that will be received by the designated recipient (after deducting covered third-party fees) may be estimated under proposed § 1005.32(b)(4)(i) only if the exchange rate is permitted to be estimated under proposed § 1005.32(b)(4)(i) and the estimated exchange rate affects the amount of such disclosures. For example, if a remittance transfer will be received by the designated recipient in

[60] As noted above, one trade association commenter urged the Bureau to utilize its EFTA section 904(c) authority by exempting insured institutions from providing exact estimates of exchange rates and covered third-party fees and allowing them to continue relying on estimates in their disclosures when they are unable to determine accurate information, without attaching a threshold to the exemptions. Also, a bank commenter asked the Bureau to adopt simplified exceptions that treat a sending institution's reliance on exchange rate and covered third-party fee amounts provided by a correspondent as sufficient for disclosure purposes.

the same currency as the one in which the transfer is funded, the insured institution would not disclose an exchange rate for the transfer, and the total amount that will be transferred to the recipient inclusive of covered third-party fees, the amount of covered third-party fees, and the amount that will be received by the designated recipient (after deducting covered third-party fees) will not be affected by an exchange rate. In that case, an insured institution could not have used proposed § 1005.32(b)(4) to estimate those disclosures. The insured institution, however, may be able to use another permanent exception set forth in § 1005.32(b), including the exception in proposed § 1005.32(b)(5), to estimate those disclosures if the conditions of those provisions are met.

Proposed comment 32(b)(4)–1 provided guidance on whether an insured institution cannot determine the exact exchange rate applicable to a remittance transfer at the time the disclosures must be given. Specifically, proposed comment 32(b)(4)–1 stated that for purposes of proposed § 1005.32(b)(4)(i)(B), an insured institution cannot determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for a remittance transfer to a particular country where the designated recipient of the transfer will receive funds in the country's local currency if the exchange rate for the transfer is set by a person other than (1) the insured institution; (2) an institution that has a correspondent relationship with the insured institution; (3) a service provider for the insured institution; or (4) a person that acts as an agent of the insured institution. The Bureau believed that proposed comment 32(b)(4)–1 set forth the circumstances in which an insured institution could not determine the exchange rate for a particular transfer sent through correspondent banks in an open network payment system and sought comment on this provision.

Proposed comment 32(b)(4)–1.i set forth an example of when an insured institution cannot determine an exact exchange rate under proposed § 1005.32(b)(4)(i)(B) for a remittance transfer. Proposed comment 32(b)(4)–1.ii would set forth two examples of whether an insured institution could determine an exact exchange rate under proposed § 1005.32(b)(4)(i)(B) for a remittance transfer, and thus the insured institution may not use the proposed exception in proposed § 1005.32(b)(4) to estimate the disclosures required under § 1005.31(b)(1)(iv) through (vii) for the remittance transfer.

Proposed comment 32(b)(4)–2.i set forth that for purposes of determining whether an insured institution made 1,000 or fewer remittance transfers in the prior calendar year to a particular country pursuant to proposed § 1005.32(b)(4)(i)(C), the number of remittance transfers provided includes transfers in the prior calendar year to that country if the designated recipients of those transfers received funds in the country's local currency regardless of whether the exchange rate was estimated for those transfers. The proposed comment provided an example to illustrate. Also, proposed comment 32(b)(4)–2.ii provided that for purposes of the 1,000-transfer threshold, the number of remittance transfers does not include remittance transfers to a country in the prior calendar year if the designated recipients of those transfers did not receive the funds in the country's local currency. The proposed comment contained an example to illustrate.

The Bureau also proposed conforming changes to the following provisions to reference the proposed exception in § 1005.32(b)(4) if the temporary exception in § 1005.32(a) currently is referenced and pertains to the estimation of the exchange rate: (1) § 1005.32(c); (2) § 1005.33(a)(1)(iii)(A); (3) § 1005.36(b)(3); (4) comment 32–1; (5) comment 32(b)(1)–4.ii; (6) comment 32(d)–1; and (7) comment 36(b)–3.

Comments Received

The Bureau received a significant number of comments on proposed § 1005.32(b)(4) from banks, credit unions, their trade associations, and their service providers. The Bureau received approximately 60 comment letters from individual consumers; nearly all of whom were credit union members. The Bureau received two comments from consumer groups.

Comments from credit unions, banks, their trade associations, and their service providers. Many industry commenters provided the same comments for both proposed § 1005.32(b)(4) related to estimating the exchange rate and proposed § 1005.32(b)(5) related to estimating covered third-party fees. These comments generally are addressed in this section in relation to § 1005.32(b)(4) and are addressed in the section-by-section analysis of § 1005.32(b)(5) in relation to § 1005.32(b)(5).

Many industry commenters encouraged the Bureau to adopt proposed § 1005.32(b)(4) and (5) to permit insured institutions to estimate the exchange rate and covered third-party fees in certain circumstances. For example, one credit union indicated that these proposed exceptions would help financial institutions to reenter the international funds transfer system without placing undue risk and burdens on the institution for issues outside their control. A trade association representing credit unions indicated that it supported these proposed exceptions and appreciated the Bureau's efforts to manage consumer protection while fostering an environment in which credit unions can provide and develop affordable products and services to their members. One service provider indicated that the proposed exceptions would help ensure that entities that make a limited number of remittance transfers can remain competitive in the global payments space without incurring the burden of compliance costs.

Several trade associations representing credit unions urged the Bureau to revise proposed § 1005.32(b)(4) and (5) to increase the threshold amount for exchange rates and covered third-party fees to 2,000 transfers in the prior calendar year. Several of these trade associations indicated that to align proposed exceptions in proposed § 1005.32(b)(4) and (5) with their recommendation that the Bureau raise the normal course of business safe harbor threshold to 1,000 transfers, the Bureau should correspondingly increase the thresholds for proposed § 1005.32(b)(4) and (5) to 2,000 or fewer transfers in the prior calendar year. Another trade association representing credit unions indicated that a 2,000-transfer threshold in the prior calendar year would allow more institutions that are not primarily remittance transfer businesses to be positioned to continue to offer remittances without incurring the higher costs (normally passed through to the consumer) that will likely result should the temporary exception simply expire in July 2020. Another trade association representing credit unions suggested that the threshold amounts in proposed § 1005.32(b)(4) and (5) should be the same, and the Bureau should raise both thresholds to 2,000 in the prior calendar year. This trade association indicated that having the same threshold for both proposed exceptions would be easier to implement from an operational perspective because the adoption of differing thresholds on a per member basis could introduce complicated tracking issues.

With respect to the threshold amounts in proposed § 1005.32(b)(4) and (5), one trade association indicated that the Bureau should exclude correspondent

remittance transfers serviced by a financial institution from the threshold amounts. Another trade association indicated that the Bureau should exclude closed loop transfers from being considered for purposes of the thresholds under § 1005.32(b)(4) and (5). This trade association indicated that closed loop offerings involve agency-type relationships with recipient institutions and do not require estimation, but they are distinct from wire transfers and should not be counted towards the threshold amounts. One trade association representing credit unions indicated that the Bureau should commit to revisiting the sufficiency of the thresholds in proposed § 1005.32(b)(4) and (5) shortly after implementation of a final rule to ensure that costs borne by correspondents ineligible to use estimates are not passed on to community institutions that do not themselves exceed the thresholds.

One bank requested that the Bureau provide guidance regarding application of thresholds set forth in proposed § 1005.32(b)(4) and (5) if an institution merges with another or acquires another institution. This bank indicated that the Bureau should provide a grace period of at least six months when this occurs, as the combination of two remittance transfer providers could result in the number of transfers exceeding a threshold and thereby imposing requirements that had not applied before. The bank indicated that when this happens, the institution that remains should be afforded sufficient time to adjust its processes and procedures to the Remittance Rule's requirements.

Two trade associations indicated that the Bureau should establish a six-month transition period after an insured institution exceeds the threshold amounts in proposed § 1005.32(b)(4) and (5) during which the institution could still avail itself of the new proposed exceptions. They asserted this would ease the compliance burden for institutions that cross a threshold towards the end of a calendar year.

In the 2019 Proposal, the Bureau solicited comment on whether the proposed exceptions in proposed § 1005.32(b)(4) and (5) should contain a sunset provision. Several banks and a trade association urged the Bureau not to sunset proposed § 1005.32(b)(4) and (5). They asserted that sunset provisions create unnecessary uncertainty for consumers and institutions.

Several industry commenters provided comments that related specifically to proposed § 1005.32(b)(4) for estimating the exchange rate. One trade association supported proposed § 1005.32(b)(4) and indicated that the cost of keeping up with all of the potential exchange rates is an additional regulatory burden that has discouraged smaller community banks from offering this service.

One trade association believed that the 1,000 transfer-threshold under proposed § 1005.32(b)(4) was appropriate if, as discussed below, the Bureau encourages broader use of the permanent exception for transfers to certain countries in existing § 1005.32(b)(1). This trade association indicated that a remittance transfer provider's ability to disclose an exchange rate is not necessarily tied to the number of transfers in local currency that it sends to a particular country. This trade association indicated that, even if a provider sends more than the prescribed number of transfers in local currency to a country, depository institutions may still need to estimate exchange rates due to the idiosyncrasies of certain currencies. This trade association believed that their members could address these idiosyncrasies without the need to increase the 1,000-transfer threshold if, as discussed below, the Bureau encourages broader use of the permanent exception for transfers to certain countries in existing § 1005.32(b)(1).

One trade association requested that the Bureau clarify whether remittance transfer providers must disclose an exchange rate in situations in which the sender instructs the remittance transfer provider to send the transfer in U.S. dollars, but the provider knows that the general market practice in the recipient country is to convert transfers received in U.S. dollars into the local currency.

The Bureau received no comments from industry specifically on proposed comment 32(b)(4)–1 that set forth guidance on whether, under proposed § 1005.32(b)(4)(i)(B), an insured institution cannot determine the exact exchange rate applicable to a remittance transfer at the time the disclosures must be given.

Individual commenters. Nearly all of the individual commenters were credit union members. These individual commenters suggested that the Bureau should increase the thresholds for the proposed exceptions in § 1005.32(b)(4) and (5) to 2,000 or fewer transfers. These individual commenters indicated that to align proposed exceptions in proposed § 1005.32(b)(4) and (5) with their recommendation that the Bureau raise the normal course of business safe harbor threshold to 1,000 transfers, the Bureau should correspondingly increase the thresholds for proposed § 1005.32(b)(4) and (5) to 2,000 or fewer transfers in the prior calendar year to reflect a ''normal course of business'' threshold set at 1,000 transfers. One individual commenter supported the proposed exceptions in proposed § 1005.32(b)(4) and (5), asserting that they would benefit insured institutions but not likely harm consumers. One individual commenter opposed the proposed exceptions in § 1005.32(b)(4) and (5), asserting that these exceptions prevent transparency for the public and consumers.

Consumer groups. The Bureau received two comment letters from consumer groups. These consumer groups opposed both the proposed exceptions in proposed § 1005.32(b)(4) and (5), citing three primary concerns: (1) Market data, including data related to financial institution remittance transfers, do not support the need for the rule changes; (2) there is insufficient legal justification for the broad changes proposed in the 2019 Proposal; and (3) the Bureau has not sufficiently studied the impact of the proposed amendments on consumers to assess the need for the amendments and any possible negative impacts. These consumer groups also asserted that these proposed exceptions would further harm consumers and contradict congressional intent by, in effect, converting an exception that Congress designated as temporary (ending in July 2020) into exceptions that are permanent, for many of the financial institutions that use it today. They thus asserted that adopting the exceptions as proposed would harm consumers by limiting the protections and benefits they receive from the Rule, including the ability to know precisely how much money a recipient will receive, the ability to accurately identify the cheapest provider, and access to full error resolution protections when the amount received is different from the amount disclosed. These consumer groups suggested that the Bureau should withdraw its proposal in its entirety and instead consider ways to expand the applicability of EFTA's protections for remittances.

The consumer groups also indicated that, if the Bureau does adopt proposed § 1005.32(b)(4) and (5), the Bureau should not make these exceptions permanent. They indicated that the Bureau's analysis recognizes that market evolutions are giving financial institutions more options for disclosing exact exchange rates and fees, but inexplicably creates exceptions that lasts forever. They indicated that in doing so, the Bureau ignores the important forcing effect of a compliance

deadline, the existing trend away from reliance on the temporary exception, and the evolution of methods for sending money.

In the 2019 Proposal, the Bureau requested comment on whether proposed § 1005.32(b)(4) and (5) should apply to providers that are not insured institutions. The consumer groups indicated that the Bureau should not extend these proposed exceptions to non-insured institutions. They indicated that rolling back already-required protections in other segments of the market would harm consumers and undermine the purpose of EFTA. They believed there is no reason or authority for extending any new exceptions to non-insured entities.

The Final Rule

As set forth herein, this final rule adopts § 1005.32(b)(4) and comments 32(b)(4)–1 and –2 as proposed. As explained in more detail below, this final rule adds comment 32(b)(4)–3 to provide a transition period for insured institutions that exceed the 1,000-transfer threshold under § 1005.32(b)(4) in a certain year, which would allow them to continue to provide estimates of the exchange rate for a reasonable period of time while they come into compliance with the requirement to provide exact exchange rates. This final rule also adopts conforming changes as proposed to the following provisions to reference the exception in § 1005.32(b)(4) where the temporary exception in § 1005.32(a) currently is referenced and pertains to the estimation of the exchange rate: (1) § 1005.32(c); (2) § 1005.33(a)(1)(iii)(A); (3) § 1005.36(b)(3); (4) comment 32–1; (5) comment 32(b)(1)–4.ii; (6) comment 32(d)–1; and (7) comment 36(b)–3.

Based on the comments received on the 2019 Proposal and prior outreach and research, the Bureau believes that the data it has collected support the adoption of § 1005.32(b)(4) and comments 32(b)(4)–1 through –3. The Bureau's legal authority to adopt these provisions is discussed below.

Based on the comments received on the 2019 Proposal and prior outreach and research, the Bureau determines that if an insured institution is sending 1,000 or fewer remittance transfers to a particular country in the country's local currency, it may be unduly costly for the institution to establish and maintain currency-trading desk capabilities and risk management policies and practices related to foreign exchange trading of that currency. It also may be unduly costly to use service providers, correspondent institutions, or persons that act as the insured institution's agent to obtain exact exchange rates for that currency. Based on the comments received on the 2019 Proposal and other outreach and research, the Bureau determines that the disproportionate cost of sending to certain countries is a primary factor in whether an insured institution will perform the currency exchange and thus whether it would know the exact exchange rate to provide in its disclosures. In cases in which the volume is less than the proposed 1,000-transfer threshold in the previous calendar year to a particular country in the country's local currency, the Bureau concludes that if the insured institution cannot estimate the exchange rate for a particular transfer to that country, the institution would no longer continue to make transfers to that country in the country's local currency because the costs associated with performing the currency exchange upfront outweigh the benefits given the relatively few transfers sent to the country. The Bureau determines that if these institutions discontinued providing such transfers, consumer access to remittance transfer services for certain countries may be reduced or eliminated. As discussed in more detail above in the section-by-section analysis of § 1005.32(a), it appears increasingly unlikely that any new technologies or partnerships will be able to fully eliminate insured institutions' reliance on estimates in the short-to-medium term. The Bureau concludes that some financial institutions may lack the scale for it to be practicable to cover the costs of establishing and maintaining currency-trading desks and managing the risk of exchange rate trading of currency for certain countries, or to use service providers, correspondent institutions, or persons that act as the insured institution's agent to obtain exact exchange rates for those currencies.

Also, the Bureau determines that, when the temporary exception expires, if the Rule did not allow estimates of the exchange rate in certain circumstances, some insured institutions that continue to offer remittance transfer services may see costs increase when sending transfers to certain countries because these institutions may have to change how they provide remittance transfers to disclose exact exchange rates. This would lead to increased prices for consumers. In addition, the Bureau concludes that prices for consumers may also increase for transfers to certain countries due to reduced competition if the number of remittance transfer providers offering remittance transfers to such countries were reduced due to some insured institutions eliminating or curtailing remittance transfer services because they could not determine and disclose exact exchange rates for those countries.

Each of the four conditions set forth in § 1005.32(b)(4)(i)(A) through (D) is discussed in more detail below.

The remittance transfer provider is an insured institution. This final rule adopts § 1005.32(b)(4)(i)(A) as proposed to provide that the remittance transfer provider must be an insured institution as defined in § 1005.32(a)(3). In the 2019 Proposal, the Bureau solicited comment on whether the proposed exception in § 1005.32(b)(4) should be extended to apply to remittance transfer providers that are not insured institutions, including MSBs and broker-dealers. This final rule does not extend the exception in § 1005.32(b)(4) to apply to remittance transfer providers that are not insured institutions. In response to the 2019 Proposal, the consumer group commenters did not support extending the exception in § 1005.32(b)(4) to providers that are not insured institutions. No industry commenters commented on this issue. The Bureau believes that it is appropriate to apply the exception in § 1005.32(b)(4) only to insured institutions. The exception in § 1005.32(b)(4) is primarily designed to address providers' concerns about knowing the exact exchange rate at the time disclosures are provided for remittance transfers sent via correspondent banks in an open network payment system. The Bureau believes that the great majority of these transfers are provided by insured institutions and that, in turn, these open network transfers are the most common type of remittance transfer provided by insured institutions.

The insured institution cannot determine the exact exchange rate for the transfer at the time it must provide the applicable disclosures. This final rule adopts § 1005.32(b)(4)(i)(B) as proposed to require that, at the time the insured institution must provide the disclosure required by § 1005.31(b)(1) through (3) or § 1005.36(a)(1) or (2), as applicable, the insured institution cannot determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for that remittance transfer. This final rule also adopts comment 32(b)(4)–1 as proposed to provide guidance on whether an insured institution cannot determine the exact exchange rate applicable to a remittance transfer at the time the disclosures must be given. The Bureau did not receive any specific comments on § 1005.32(b)(4)(i)(B) or comment 32(b)(4)–1. The Bureau notes that if the

insured institution can determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for the remittance transfer, the insured institution may not use the exception in § 1005.32(b)(4) to estimate the exchange rate, even if the insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the particular country as set forth in § 1005.32(b)(4)(i)(C).

The insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency. This final rule adopts § 1005.32(b)(4)(i)(C) as proposed to provide that, with respect to the country to which the remittance transfer is being sent, the insured institution must have made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency. Several industry commenters suggested that the Bureau should increase this threshold amount to 2,000 transfers in the previous year. Nonetheless, these commenters did not provide specific data on why this higher threshold is needed to protect access to transfers to certain countries. The Bureau determines that the 1,000-transfer threshold adopted in § 1005.32(b)(4) is consistent with its goal to provide a tailored permanent exception to address compliance challenges that insured institutions may face in certain circumstances upon the expiration of the temporary exception and to preserve consumers' access to remittance transfers sent to certain countries.

With respect to the threshold amount for proposed § 1005.32(b)(4)(i)(C), one trade association indicated that the Bureau should exclude correspondent remittance transfers serviced by a financial institution from the count. The Bureau agrees and further believes that the 2019 Proposal was, and this final rule is, clear that the 1,000-transfer threshold set forth in § 1005.32(b)(4)(i)(C) only includes transfers in the previous year that are made by the insured institution in its role as the remittance transfer provider. The 1,000-transfer threshold does not include transfers where an insured institution is acting as a correspondent on behalf of a sending institution.

The Bureau is not excluding closed loop transfers from being included in the number of transfers that count toward the threshold under § 1005.32(b)(4)(i)(C). The Bureau understands that with respect to closed loop transfers, the insured institution does not need to estimate the exchange rate because it has set up currency-trading desk capabilities and risk management policies and practices related to foreign exchange trading of that currency, or arranged to use service providers, correspondent institutions, or persons that act as the insured institution's agent to obtain exact exchange rates for that currency. The Bureau does not believe that these closed loop transfers should be excluded from the 1,000-transfer threshold because those transfers might make it more likely that it is cost effective for the insured institution to extend these existing capabilities to cover additional transfers.

In this final rule, the Bureau also declines to commit to revisit the sufficiency of the thresholds in proposed § 1005.32(b)(4) and (5) shortly after implementation of a final rule to ensure that costs borne by correspondents ineligible to use estimates are not passed on to community institutions that do not themselves exceed the thresholds. The Bureau expects that larger insured institutions that cannot estimate the exchange rate or covered third-party fees for their own transfers under the exceptions in § 1005.32(b)(4) or (5) will continue to act as correspondent banks for sending institutions that can continue to estimate the exchange rate or covered third-party fees under the exceptions in § 1005.32(b)(4) or (5) for their transfers. The Bureau will continue to monitor the remittance market, including monitoring the impact of the new exceptions in § 1005.32(b)(4) and (5), and will revisit the thresholds if it concludes that it may be appropriate to change them.

The remittance transfer is sent from the sender's account with the insured institution. This final rule adopts § 1005.32(b)(4)(i)(D) as proposed to provide that the remittance transfer must be sent from the sender's account with the insured institution; provided, however, for the purposes of § 1005.32(b)(4)(i)(D), a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account. The Bureau did not receive any comments on this provision.

Transition period. In response to comments received on the 2019 Proposal, the Bureau is adding a new comment 32(b)(4)–3 to provide a transition period for institutions that exceed the 1,000-transfer threshold under § 1005.32(b)(4) in a certain year, which would allow them to continue to provide estimates of the exchange rate for a reasonable period of time while they come into compliance with the requirement to provide exact exchange rates. Specifically, comment 32(b)(4)–3 provides that if an insured institution in the prior calendar year did not exceed the 1,000-transfer threshold to a particular country pursuant to § 1005.32(b)(4)(i)(C), but does exceed the 1,000-transfer threshold in the current calendar year, the insured institution has a reasonable amount of time after exceeding the 1,000-transfer threshold to begin providing exact exchange rates in disclosures (assuming it cannot rely on another exception in § 1005.32 to estimate the exchange rate). The reasonable amount of time must not exceed the later of six months after exceeding the 1,000-transfer threshold in the current calendar year or January 1 of the next year. Comment 32(b)(4)–3 also provides an example to illustrate this guidance.

The Bureau concludes that this transition period will facilitate compliance with the Remittance Rule by allowing institutions a reasonable amount of time to establish currency-trading desk capabilities and develop risk management policies and practices related to foreign exchange trading of that currency, or to enter into agreements with service providers, correspondent institutions, or persons that act as the insured institution's agent to obtain exact exchange rates for that currency. Without this provision, insured institutions may find it difficult or impossible to comply with the requirement to provide exact exchange rate disclosures starting January 1 of the next year if they exceed the 1,000-transfer threshold late in the current year. The Bureau determines this transition period also may help to address issues raised by industry commenters related to mergers and acquisitions, if the combination of two remittance transfer providers could result in the number of transfers exceeding a threshold and thereby imposing requirements that had not applied before.

Permanent exception. In the 2019 Proposal, the Bureau solicited comment on whether the Bureau should adopt a sunset provision with respect to the exception in proposed § 1005.32(b)(4). Consumer group commenters indicated that if the Bureau does adopt proposed § 1005.32(b)(4), the Bureau should not make this exception permanent. They indicated that the Bureau's analysis recognizes that market evolutions are giving financial institutions more options for disclosing exact exchange rates and fees and noted the important forcing effect of a compliance deadline,

the existing trend away from reliance on the temporary exception, and the evolution of methods for sending money. Several banks and a trade association urged the Bureau not to sunset proposed § 1005.32(b)(4). They asserted that sunset provisions create unnecessary uncertainty for consumers and institutions.

The Bureau is not adopting a sunset provision with respect to § 1005.32(b)(4). The Bureau agrees certain developments in the market could make it practicable for insured institutions to disclose exact exchange rates for transfers, but the Bureau cannot forecast when technological and market developments will permit this to occur. Instead of setting a specific sunset date, the Bureau will continue to monitor the market and make any changes to the exception as necessary through the notice and comment process. The Bureau concludes that this process will allow it to respond better to changes in market conditions, rather than adopting a specific sunset date in the face of technological and market uncertainty.

Guidance on when the disclosure of an exchange rate is required. One trade association requested that the Bureau clarify if remittance transfer providers must disclose an exchange rate in situations in which the sender instructs the remittance transfer provider to send the transfer in U.S. dollars, but the provider knows that the general market practice in the recipient country is to convert transfers received in U.S. dollars into the local currency. As discussed in the 2019 Proposal, current comment 31(b)(1)(iv)–1 provides guidance on how a remittance transfer provider can determine in which currency the designated recipient will receive the funds. The comment provides that for purposes of determining whether an exchange rate is applied to the transfer, if a remittance transfer provider does not have specific knowledge regarding the currency in which the funds will be received, the provider may rely on a sender's representation as to the currency in which funds will be received. For example, if a sender requests that a remittance transfer be deposited into an account in U.S. dollars, the provider need not disclose an exchange rate, even if the account is denominated in Mexican pesos and the funds are converted prior to deposit into the account. Thus, under the existing commentary, a remittance transfer provider may rely on a sender's representation as to the currency in which funds will be received for purposes of determining whether an exchange rate is applied to the transfer, unless the remittance transfer provider has actual knowledge regarding the currency in which the funds will be received for the transfer. Actual knowledge does not include knowledge that the general market practice in the recipient country is to convert transfers received in U.S. dollars into the local currency. If a sender does not know the currency in which funds will be received, the provider may assume that the currency in which funds will be received is the currency in which the remittance transfer is funded.

Legal authority. To effectuate the purposes of EFTA and to facilitate compliance, the Bureau is using its EFTA section 904(a) and (c) authority to adopt a new exception under § 1005.32(b)(4). Under its EFTA section 904(c) authority, the Bureau ''may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.'' [61] The Bureau believes that this exception would facilitate compliance with EFTA, preserve consumer access, and effectuate its purposes. Specifically, the Bureau interprets ''facilitate compliance'' to include enabling or fostering continued operation in conformity with the law. The Bureau believes that this exception is targeted to facilitate compliance in those circumstances where it may be infeasible or impracticable (due to disproportionate cost) for insured institutions to determine the exchange rate because of an insufficient number of transfers to a particular country. Moreover, in the circumstances where institutions may be able to take advantage of this disclosure exception, the insured institutions remain subject to the Remittance Rule's other requirements, including the continued obligation to provide disclosures and the requirements related to error resolution and cancellation rights. The Bureau's authority, therefore, is tailored to providing an adjustment for the specific compliance difficulties or challenges that insured institutions face in providing exact disclosures that could cause those institutions to reduce or cease offering transfers to certain countries, which in turn could mean that consumers have less access to remittance transfer services or have to pay more for them. By preserving such access, the exception could also help maintain competition in the marketplace, therefore effectuating one of EFTA's purposes. If the temporary exception expired without the Bureau taking any mitigation measures, the Bureau concludes that certain insured institutions may stop sending transfers to certain countries, therefore potentially reducing competition for those transfers. This potential loss of competition could be detrimental to consumers because the price of transfers could increase or because it could become less convenient to send them.[62]

32(b)(5) Permanent Exception for Estimation of Covered Third-Party Fees by an Insured Institution

Proposed § 1005.32(b)(5) provided that in certain circumstances, insured institutions may estimate covered third-party fees (and other disclosure information that depend on the covered third-party fees) that must be included in the disclosures required by §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2). This proposed exception was designed to provide a tailored permanent exception to address compliance challenges that insured institutions may face in certain circumstances upon the expiration of the temporary exception and to preserve consumers' access to certain remittance transfers. For the reasons set forth herein, the Bureau is adopting the proposed exception generally as proposed.

The term ''covered third-party fees'' is defined in § 1005.30(h)(1) to mean any fees (other than ''non-covered third-party fees'' described in § 1005.30(h)(2)) that a person other than the remittance transfer provider imposes on the transfer. Fees imposed on a remittance transfer by an intermediary institution are covered third-party fees. In addition, fees imposed by a designated recipient's institution on a remittance transfer are covered third-party fees if the designated recipient's institution acts as an agent for the remittance transfer provider.

In contrast, the term ''non-covered third-party fees'' is defined in § 1005.30(h)(2) as any fees imposed by the designated recipient's institution for receiving a remittance transfer into an account except if the institution acts as an agent of the remittance transfer provider. Fees a designated recipient's institution imposes on a remittance transfer are non-covered third-party fees if the designated recipient's institution

[61] 15 U.S.C. 1693b(c).

[62] As the Bureau stated in the 2019 RFI, the Bureau recognizes the value to consumers of being able to send remittance transfers directly from a checking account to the account of a recipient in a foreign country through their bank or credit union. 84 FR at 17974.

does not act as an agent of the remittance transfer provider. The term ''agent'' is defined in § 1005.30(a) to mean an agent, authorized delegate, or person affiliated with a remittance transfer provider, as defined under State or other applicable law, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

The Bureau's Proposal

Proposed § 1005.32(b)(5)(i) generally provided that for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for a remittance transfer to a particular designated recipient's institution in accordance with § 1005.32(c) for the amounts required to be disclosed under § 1005.31(b)(1)(vi) through (vii), if all of the following conditions are met: (1) The remittance transfer provider is an insured institution, as defined in § 1005.32(a)(3); (2) the insured institution cannot determine the exact covered third-party fees for a remittance transfer to a particular designated recipient's institution at the time it must provide the applicable disclosures; (3) the insured institution made 500 or fewer remittance transfers in the prior calendar year to that designated recipient's institution; and (4) the remittance transfer generally is sent from the sender's account with the insured institution.

Proposed § 1005.32(b)(5)(i) generally applied to the following disclosures set forth in § 1005.31(b)(1)(vi) through (vii) respectively: (1) The amount of any covered third-party fees; and (2) the amount that will be received by the designated recipient (after deducting any covered third-party fees). Proposed § 1005.32(b)(5)(ii) provided, however, that the amount that will be received by the designated recipient (after deducting covered third-party fees) may be estimated under proposed § 1005.32(b)(5)(i) only if covered third-party fees are permitted to be estimated under proposed § 1005.32(b)(5)(i) and the estimated covered third-party fees affect the amount of such disclosure. For example, if the covered third-party fees for a remittance transfer may not be estimated under proposed § 1005.32(b)(5), the amount that will be received by the designated recipient (after deducting any covered third-party fees) may not be estimated under proposed § 1005.32(b)(5). The insured institution, however, could be able to use another permanent exception set forth in § 1005.32(b), including the proposed exception in § 1005.32(b)(4), to estimate that disclosure if the conditions of those exceptions are met.

Proposed comment 32(b)(5)–1 provided guidance on when an insured institution cannot determine the exact covered third-party fees as applicable to a remittance transfer at the time the disclosures must be given. Specifically, proposed comment 32(b)(5)–1 provided that for purposes of § 1005.32(b)(5)(i)(B), an insured institution cannot determine, at the time it must provide the applicable disclosures, the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for a remittance transfer to a designated recipient's institution when all of the following conditions are met: (1) The insured institution does not have a correspondent relationship with the designated recipient's institution; (2) the designated recipient's institution does not act as an agent of the insured institution; (3) the insured institution does not have an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer (*e.g.,* an agreement whereby the designated recipient's institution agrees to charge back any covered third-party fees to the insured institution rather than impose the fees on the remittance transfer); and (4) the insured institution does not know at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution. The Bureau initially concluded that proposed comment 32(b)(5)–1 set forth the circumstances in which an insured institution cannot determine the exact covered third-party fees for remittance transfers sent through correspondent banks in an open network payment system and sought comment on this provision.

In contrast, proposed comment 32(b)(5)-2 provided that for purposes of proposed § 1005.32(b)(5)(i)(B), an insured institution can determine, at the time it must provide the applicable disclosures, exact covered third-party fees for a remittance transfer, and thus the insured institution may not use the exception in proposed § 1005.32(b)(5) to estimate the disclosures required under § 1005.31(b)(1)(vi) or (vii) for the transfer, if any of the following conditions are met: (1) An insured institution has a correspondent relationship with the designated recipient's institution; (2) the designated recipient's institution acts as an agent of the insured institution; (3) an insured institution has an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer; or (4) an insured institution knows at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution. The Bureau initially concluded that proposed comment 32(b)(5)–2 set forth the circumstances in which an insured institution can determine the exact covered third-party fees for remittance transfers sent through correspondent banks in an open network payment system and sought comment on this provision.

Proposed comment 32(b)(5)–3.i provided that for purposes of determining whether an insured institution made 500 or fewer remittance transfers in the prior calendar year to a particular designated recipient's institution pursuant to proposed § 1005.32(b)(5)(i)(C), the number of remittance transfers provided includes remittance transfers in the prior calendar year to that designated recipient's institution regardless of whether the covered third-party fees were estimated for those transfers. The proposed comment provided an example to illustrate.

Proposed comment 32(b)(5)–3.ii provided that for purposes of the proposed 500-transfer threshold, the number of remittance transfers includes remittance transfers provided to the designated recipient's institution in the prior calendar year regardless of whether the designated recipients received the funds in the country's local currency or in another currency. The proposed comment provided an example to illustrate.

The Bureau also proposed conforming changes to the following provisions to reference the proposed exception in § 1005.32(b)(5) where the temporary exception in § 1005.32(a) currently is referenced and pertains to the estimation of covered third-party fees: (1) § 1005.32(c); (2) § 1005.33(a)(1)(iii)(A); (3) § 1005.36(b)(3); (4) comment 32–1; (5) comment 32(c)(3)–1; and (6) comment 36(b)–3.

Comments Received

Similar to proposed § 1005.32(b)(4), the Bureau received a significant

number of comments on proposed § 1005.32(b)(5) from banks, credit unions, their trade associations, and their service providers. The Bureau also received approximately 60 comments from individual consumers, nearly all of whom were credit union members. The Bureau received two comments from consumer groups.

Comments from credit unions, banks, their trade associations, and their service providers. As discussed in more detail in the section-by-section analysis of § 1005.32(b)(4), many industry commenters provided the same comments for both proposed § 1005.32(b)(4) related to estimating the exchange rate and proposed § 1005.32(b)(5) related to estimating covered third-party fees. Many industry commenters encouraged the Bureau to adopt proposed § 1005.32(b)(4) and (5) to permit insured institutions to estimate the exchange rate and covered third-party fees, respectively, in certain circumstances. Several trade associations representing credit unions urged the Bureau to revise both proposed § 1005.32(b)(4) and (5) to increase the threshold amounts to 2,000 transfers in the prior calendar year. Another trade association indicated that the Bureau should exclude closed loop transfers from being considered for purposes of the thresholds under proposed § 1005.32(b)(4) and (5). One bank requested that the Bureau provide guidance regarding application of the thresholds set forth in proposed § 1005.32(b)(4) and (5) if an institution merges with another or acquires another institution. Two trade associations indicated that the Bureau should establish a six-month transition period after an insured institution exceeds the threshold amounts in proposed § 1005.32(b)(4) and (5) during which the institution could still avail itself of the new proposed exceptions. In the 2019 Proposal, the Bureau solicited comment on whether the proposed exceptions in proposed § 1005.32(b)(4) and (5) should be sunset. Several banks and a trade association urged the Bureau not to sunset proposed § 1005.32(b)(4) and (5). These comments are addressed with respect to § 1005.32(b)(5) below.

One trade association representing credit unions indicated that the Bureau should commit to revisiting the sufficiency of the thresholds in proposed § 1005.32(b)(4) and (5) shortly after implementation of a final rule to ensure that costs borne by correspondents ineligible to use estimates are not passed on to community institutions that do not themselves exceed the thresholds. This comment is addressed in the section-by-section analysis of § 1005.32(b)(4).

Several industry commenters provided comments that related specifically to proposed § 1005.32(b)(5) for estimating covered third-party fees. Two trade associations requested that the Bureau increase the threshold to 1,000 or fewer transfers to a particular designated recipient's institution in the prior calendar year. These trade associations indicated that a 1,000-transfer threshold is more appropriate due to repetitive requests by consumer to send transfers to a single institution. One credit union urged the Bureau to increase the threshold to 3,000 or fewer transfers to a particular designated recipient's institution in the prior calendar year. This credit union indicated that the 3,000-transfer threshold amount is a more accurate number that reflects when an institution is unable to determine an exact amount of covered third-party fees.

One trade association suggested that insured institutions should be permitted to send more than 500 transfers in the prior year to a particular designated recipient's institution and still qualify for the exception, if one of the following conditions applies: (i) Establishing a relationship management application (RMA) or correspondent or agency arrangement with a recipient institution would exceed the provider's risk tolerance; (ii) regulatory compliance challenges posed by another rule or guideline that prevent the provider from establishing these relationships or other regulatory restrictions; (iii) a recipient institution refuses to have an RMA or correspondent or agency arrangement with the provider; (iv) a recipient institution is in a jurisdiction where instructions (such as OUR codes) [63] are routinely disregarded; or (v) the remittance transfer is instructed in a currency that is not the local currency. This trade association indicated that during an examination, a regulator can evaluate that the provider did in fact document risk or regulatory compliance reasons for being unable to establish an RMA.

Several industry commenters suggested that the Bureau exclude certain transfers from the 500-transfer threshold or clarify whether certain transfers are included within the threshold. One trade association indicated that the Bureau should exclude remittance transfers delivered in U.S. dollars from the threshold count, regardless of whether money is converted into local currency before final delivery in U.S. dollars. Two trade associations indicated that the Bureau should count recipient institutions by the first eight digits in a bank identifier code, which identify a bank at a country level. These trade associations urged the Bureau to count transfers at a country, rather than global level, given that multinational banks typically have very different policies from one country to the next.

The Bureau did not receive any comments from industry specifically on proposed comments 32(b)(5)–1 and –2 that set forth guidance on whether under proposed § 1005.32(b)(5)(i)(B) an insured institution cannot determine the exact covered third-party fees applicable to a remittance transfer at the time the disclosures must be given.

Individual commenters. Nearly all of the individual commenters were credit union members. These individual commenters suggested that the Bureau should increase the thresholds for the proposed exceptions in § 1005.32(b)(4) and (5) to 2,000 or fewer transfers. These individual commenters indicated that to align proposed exceptions in proposed § 1005.32(b)(4) and (5) with their recommendation that the Bureau raise the normal course of business safe harbor threshold to 1,000 transfers, the Bureau should correspondingly increase the thresholds for proposed § 1005.32(b)(4) and (5) to 2,000 or fewer transfers in the prior calendar year to reflect a ''normal course of business'' threshold set at 1,000 transfers. One individual commenter supported the proposed exceptions in proposed § 1005.32(b)(4) and (5), asserting that they would benefit insured institutions but not likely harm consumers. One individual commenter opposed the proposed exceptions in § 1005.32(b)(4) and (5), asserting that these exceptions prevent transparency for the public and consumers.

Consumer groups. The Bureau received comment letters from two consumer groups. As discussed in more detail in the section-by-section analysis of § 1005.32(b)(4), these consumer groups opposed both of the proposed exceptions in proposed § 1005.32(b)(4) and (5). These consumer groups indicated that the Bureau should withdraw its proposal in its entirety and instead consider ways to expand the applicability of EFTA's protections for remittances. The consumer groups also indicated that if the Bureau does adopt proposed § 1005.32(b)(4) and (5), the Bureau should not make these

[63] As discussed in greater detail in the 2019 Proposal, the OUR code instructs financial institutions that receive payment instructions sent via SWIFT that the sending institution will bear all of the payment transaction fees and the recipient of the payment will not pay any such fees. 84 FR 67132, 67148 (Dec. 6, 2019).

exceptions permanent. The consumer groups also indicated that the Bureau should not extend these proposed exceptions to non-insured institutions.

The Final Rule

This final rule adopts § 1005.32(b)(5) and comments 32(b)(5)–1 and –2 generally as proposed with one revision to § 1005.32(b)(5). As revised, § 1005.32(b)(5) permits an insured institution to continue to use § 1005.32(b)(5) to provide estimates of covered third-party fees for a remittance transfer sent to a particular designated recipient's institution even if the insured institution sent more than 500 transfers to the designated recipient's institution in the prior calendar year, if a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees, and the insured institution meets the other conditions set forth in § 1005.32(b)(5).[64] This final rule adopts comment 32(b)(5)–3 as proposed with one revision to clarify that the 500-transfer threshold applicable to a particular designated recipient's institution in the past calendar year only includes transfers to the designated recipient's institution and any of its branches in the country to which the particular transfer described in § 1005.32(b)(5) is sent. This final rule also adds a new comment 32(b)(5)–4 to provide additional guidance on the provision related to United States Federal statutes or regulations as discussed above. This final rule also adds new comment 32(b)(5)–5 to provide a transition period for institutions that exceed the 500-transfer threshold-amount under § 1005.32(b)(5) in a certain year, which would allow them to continue to provide estimates of covered third-party fees for a reasonable period of time while they come into compliance with the requirement to provide exact covered third-party fees. Each of these revisions are discussed in more detail below. This final rule also adopts conforming changes to the following provisions to reference the exception in § 1005.32(b)(5) where the temporary exception in § 1005.32(a) currently is referenced and pertains to the estimation of covered third-party fees: (1) § 1005.32(c); (2) § 1005.33(a)(1)(iii)(A); (3) § 1005.36(b)(3); (4) comment 32–1; (5) comment 32(c)(3)–1; and (6) comment 36(b)–3.

In light of the comments received on the 2019 Proposal and prior outreach and research, the Bureau concludes that the data it collected support the adoption of § 1005.32(b)(5) and comments 32(b)(5)–1 through –5. The Bureau's legal authority to adopt these provisions is discussed below.

Based on the comments received on the 2019 Proposal and prior outreach and research, the Bureau determines that if an insured institution is sending 500 or fewer transfers annually to a given designated recipient's institution, it may be unduly costly for the insured institution to establish the necessary relationships to know the covered third-party fees that would apply to a remittance transfer at the time the disclosures must be given. For example, based on comments received on the 2019 Proposal and prior outreach and research, the Bureau understands that insured institutions sending remittance transfers through correspondent banks in an open network payment system would know the exact amount of covered third-party fees that will apply to a remittance transfer at the time disclosures are given if the insured institution has a correspondent relationship with the designated recipient's institution. The Bureau understands that another way in which the insured institution may know at the time the disclosures must be given the exact amount of covered third-party fees for a particular remittance transfer is through using the cover method under the SWIFT network, as discussed above. To use the cover method, the insured institution would need an RMA with the designated recipient's institution.

The Bureau understands that there are costs to maintaining the relationships that are needed to enable insured institutions to provide exact disclosures of covered third-party fees for remittance transfers.[65] Based on comments on the 2019 Proposal, and prior outreach and research, the Bureau determines that anticipated transfer volume from an insured institution to a particular designated recipient's institution is an important factor in the insured institution's decision about whether to form and maintain such relationships.

Based on the comments received on the 2019 Proposal, and prior outreach and research, the Bureau concludes that if it does not provide any additional exceptions that allow estimates of covered third-party fees after the temporary exception expires, some insured institutions may choose to stop sending remittance transfers to recipients with accounts at certain designated recipient's institutions. These insured institutions may choose to stop providing certain remittance transfers because they deem the costs of determining exact covered third-party fees to be prohibitively expensive. The Bureau concludes that if these institutions discontinue providing such transfers, consumer access to remittance transfer services for certain designated recipient's institutions may be reduced or eliminated. As discussed in more detail above in the section-by-section analysis of § 1005.32(a), it appears unlikely in the short-to-medium term that any new technologies or partnerships will be able to fully eliminate insured institutions' reliance on estimates.

Also, the Bureau concludes that in a scenario in which the Bureau provides no new exception to allow estimates of covered third-party fees when the temporary exception expires, insured institutions that continue to offer remittance transfer services may see costs increase when sending transfers to certain designated recipient's institutions if insured institutions have to change the ways they provide remittance transfers in order to disclose exact covered third-party fees. The Bureau expects that this could lead to increased prices for consumers. In addition, the Bureau determines that prices for consumers may also increase for transfers to certain designated recipient's institutions (due to reduced competition) if the number of remittance transfer providers offering remittance transfers to such designated recipient's institutions is reduced due to some providers eliminating or curtailing transfer services because they could not determine and disclose exact covered third-party fees for those designated recipient's institutions.

Each of the four conditions set forth in § 1005.32(b)(5)(i)(A) through (D) is discussed in more detail below.

The remittance transfer provider is an insured institution. This final rule adopts § 1005.32(b)(5)(i)(A) as proposed to provide that the remittance transfer provider must be an insured institution as defined in § 1005.32(a)(3). In the 2019 Proposal, the Bureau solicited comment on whether the proposed exception in § 1005.32(b)(5) should be extended to apply to remittance transfer providers that are not insured institutions,

[64] This provision only applies if a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees. The Bureau notes, however, that the permanent exception in § 1005.32(b)(1) allows estimates in certain circumstances if a remittance transfer provider cannot determine the exact amounts when the disclosure is required because the laws of the recipient country do not permit such a determination.

[65] *See* Financial Stability Bd., *FSB Correspondent Banking Data Report,* at 4, 44 (2017); 2016 BIS Report at 11.

including MSBs and broker-dealers, and the reasons why the proposed exception should apply to these persons. For the same reasons discussed in the section-by-section analysis of § 1005.32(b)(4), this final rule does not extend the exception in § 1005.32(b)(5) to apply to remittance transfer providers that are not insured institutions.

The insured institution cannot determine the exact covered third-party fees for a remittance transfer to a particular designated recipient's institution at the time it must provide the applicable disclosures. This final rule adopts § 1005.32(b)(5)(i)(B) as proposed to provide that, at the time the insured institution must provide, as applicable, the disclosure required by § 1005.31(b)(1) through (3) or § 1005.36(a)(1) or (2), the insured institution cannot determine the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for that remittance transfer. This final rule also adopts comments 32(b)(5)–1 and –2 as proposed that provide guidance on when an insured institution can or cannot determine the exact covered third-party fees as applicable to a remittance transfer at the time the disclosures must be given. The Bureau did not receive specific comments on § 1005.32(b)(5)(i)(B) and comments 32(b)(5)(i)–1 and –2. The Bureau notes that if the insured institution can determine the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(iv) for the remittance transfer, the insured institution may not use the exception in § 1005.32(b)(5) to estimate the exchange rate, even if the insured institution made 500 or fewer remittance transfers in the prior calendar year to the designated recipient's institution as set forth in § 1005.32(b)(5)(i)(C).

The insured institution made 500 or fewer remittance transfers in the prior calendar year to that designated recipient's institution. This final rule adopts the 500-transfer threshold in § 1005.32(b)(5)(i)(C) as proposed but, as discussed below, is providing additional guidance on which transfers count in this threshold. Several industry commenters suggested that the Bureau should increase this threshold amount to 1,000, 2,000, or 3,000 transfers in the previous year. Nonetheless, these commenters did not provide specific data on why these higher thresholds are needed to protect access to transfers to particular designated recipient's institutions because it would not be cost effective to establish the necessary relationships to obtain exact covered third-party fees. The Bureau believes that the 500-transfer threshold adopted in § 1005.32(b)(5)(i)(C) is consistent with its goal to provide a tailored permanent exception to address compliance challenges that insured institutions may face in certain circumstances upon the expiration the temporary exception and to preserve consumers' access to remittances transfers to certain designated recipient's institutions.

This final rule revises comment 32(b)(5)–3 from the proposal to clarify that the 500-transfer threshold applicable to a particular designated recipient's institution in the past calendar year only includes transfers to the designated recipient's institution and any of its branches in the country to which the particular transfer described in § 1005.32(b)(5) is sent. New comment 32(b)(5)–3.iii provides the following example: If the particular remittance transfer described in § 1005.32(b)(5) is being sent to the designated recipient's institution Bank XYZ in Nigeria, the number of remittance transfers for purposes of the 500-transfer threshold would include remittances transfers in the previous calendar year that were sent to Bank XYZ, or to its branches, in Nigeria. The 500-transfer threshold would not include remittance transfers that were sent to branches of Bank XYZ that were located in any country other than Nigeria. Based on outreach, the Bureau recognizes that correspondent relationships or RMAs with designated recipient's institutions are formed for a particular country and the same relationship does not cover all countries in which that designated recipient's institution operates.

With respect to the threshold amount for proposed § 1005.32(b)(5)(i)(C), one trade association indicated that the Bureau should exclude from the threshold correspondent remittance transfers serviced by a financial institution. The Bureau agrees and further believes that the 2019 Proposal was, and this final rule is, clear that the 500-transfer threshold set forth in § 1005.32(b)(5)(i)(C) only includes transfers in the previous year that are made by the insured institution in its role as the remittance transfer provider. The 500-transfer threshold does not include transfers where an insured institution is acting as a correspondent on behalf of a sending institution.

The Bureau is not excluding closed loop transfers from being included in the threshold amount under § 1005.32(b)(5)(i)(C). The Bureau understands with respect to closed loop transfers, the insured institution does not need to estimate covered third-party fees because they have an agency-type relationship that allows the insured institution to know the exact covered third-party fees. The Bureau concludes that these closed loop transfers should not be excluded from the 500-transfer threshold because these transfers might make it more likely that it is cost effective for the insured institution to extend these existing relationships to cover additional transfers.

The Bureau also is not excluding remittance transfers delivered in U.S. dollars or in a currency other than the country's local currency from the threshold amount under § 1005.32(b)(5)(i)(C). The Bureau concludes that these transfers are relevant to whether it is cost effective to develop relationships necessary to determine exact covered third-party fees regardless of whether the transfers are delivered in U.S. dollars or in a currency other than the country's local currency.

A United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees. One trade association suggested that insured institutions should be permitted to send more than 500 transfers in the prior year to a particular designated recipient's institution and still qualify for the exception, if regulatory compliance challenges posed by another rule or guideline exists that prevent the provider from establishing the necessary relationships to determine exact covered third-party fees, or other regulatory restriction.

The Bureau believes that it is appropriate for an insured institution to be able to estimate covered third-party fees if a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees and the insured institution meets the other conditions set forth in § 1005.32(b)(5). This final rule revises proposed § 1005.32(b)(5)(i)(C) to permit an insured institution to still use § 1005.32(b)(5) to provide estimates of covered third-party fees for a remittance transfer sent to a particular designated recipient's institution even if the insured institution sent more than 500 transfer to the designated recipient's institution in the prior calendar year if a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees and the insured institution meets the other conditions set forth in § 1005.32(b)(5). This final rule also adopts new comment 32(b)(5)–4 to provide additional guidance on the United

States Federal statute or regulation provision in § 1005.32(b)(5)(i)(C).

New comment 32(b)(5)–4 provides that a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees for the remittance transfer if the United States Federal statute or regulation (1) prohibits the insured institution from disclosing exact covered third-party fees in disclosures for transfers to a designated recipient's institution; or (2) makes it infeasible for the insured institution to form a relationship with the designated recipient's institution and that relationship is necessary for the insured institution to be able to determine, at the time it must provide the applicable disclosures, exact covered third-party fees. For example, if a correspondent relationship is necessary for an insured institution to be able to determine the exact covered third-party fees for transfers to a designated recipient's institution and a United States Federal statute or regulation makes it infeasible for the insured institution to establish that relationship, the insured institution may use § 1005.32(b)(5) to provide estimates of covered third-party fees for a remittance transfer sent to the designated recipient's institution even if the insured institution sent more than 500 transfers to the designated recipient's institution in the prior calendar year, as long as the insured institution meets the other conditions set forth in § 1005.32(b)(5). The Bureau is not aware of, nor did commenters identify, any United States Federal statute or regulation that would both make it infeasible for insured institutions to establish such a relationship or the other types of relationships described in comment 32(b)(5)–2 while still allowing the insured institution to make remittance transfers to a designated recipient's institution.

The trade association commenter discussed above also suggested that insured institutions should be permitted to send more than 500 transfers in the prior year to a particular designated recipient's institution and still qualify for the exception, if any of the following conditions apply: (i) Establishing an RMA or correspondent or agency arrangement with a recipient institution would exceed the provider's risk tolerance; (ii) a recipient institution refuses to have an RMA or correspondent or agency arrangement with the provider; or (iii) a recipient institution is in a jurisdiction where instructions (such as OUR codes) are routinely disregarded. The Bureau is not adopting these suggestions. The Bureau concludes that these conditions do not establish objective criteria that are both outside the provider's control and are sufficiently clear such that the Bureau and the industry would be able to determine whether these conditions are met.

The remittance transfer is sent from the sender's account with the insured institution. This final rule adopts § 1005.32(a)(5)(i)(D) as proposed to provide that the remittance transfer must be sent from the sender's account with the insured institution; provided, however, for the purposes of § 1005.32(b)(5), a sender's account would not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account. The Bureau did not receive specific comments on this provision.

Transition period. In response to comments received on the 2019 Proposal, the Bureau is adding a new comment 32(b)(5)–5 to provide a transition period for institutions that exceed the 500-transfer threshold-amount under § 1005.32(b)(5) in a certain year, which would allow them to continue to provide estimates of covered third-party fees for a reasonable period of time while they come into compliance with the requirement to provide exact covered third-party fees. Specifically, comment 32(b)(5)–5 provides that if an insured institution in the prior calendar year did not exceed the 500-transfer threshold to a particular designated recipient's institution pursuant to § 1005.32(b)(5)(i)(C), but does exceed the 500-transfer threshold in the current calendar year, the insured institution has a reasonable amount of time after exceeding the 500-transfer threshold to begin providing exact covered third-party fees in disclosures (assuming that a United States Federal statute or regulation does not prohibit the insured institution from being able to determine the exact covered third-party fees, or the insured institution cannot rely on another exception in § 1005.32 to estimate covered third-party fees). The reasonable amount of time must not exceed the later of six months after exceeding the 500-transfer threshold in the current calendar year or January 1 of the next year. Comment 32(b)(5)–5 also provides an example to illustrate this guidance.

The Bureau determines that this transition period will facilitate compliance with the Remittance Rule by allowing institutions a reasonable amount of time to establish the relationships necessary with designated recipient's institutions to provide covered third-party fees. Without this provision, insured institutions may find it difficult or impossible to comply with the requirement to provide exact covered third-party fee disclosures starting January 1 of the next year if they exceed the 500-transfer threshold late in the current year. The Bureau concludes that this transition period also may help to address issues raised by industry commenters related to mergers and acquisitions, if the combination of two remittance transfer providers could result in the number of transfers exceeding a threshold and thereby imposing requirements that had not applied before.

Permanent exception. In the 2019 Proposal, the Bureau solicited comment on whether the Bureau should adopt a sunset provision with respect to the exception in proposed § 1005.32(b)(5). For the same reasons discussed in the section-by-section analysis of § 1005.32(b)(4), the Bureau is not adopting a sunset provision with respect to § 1005.32(b)(5).

Legal authority. To effectuate the purposes of EFTA and to facilitate compliance, the Bureau is using its EFTA section 904(a) and (c) authority to add a new exception under § 1005.32(b)(5). Under its EFTA section 904(c) authority, the Bureau ''may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.'' [66] The Bureau determines that the exception would facilitate compliance with EFTA, preserve consumer access, and effectuate its purposes. Specifically, the Bureau interprets ''facilitate compliance'' to include enabling or fostering continued operation in conformity with the law. The Bureau concludes that the exception set forth in § 1005.32(b)(5) is targeted to facilitate compliance in those circumstances where it would be unduly burdensome for an insured institution to determine covered third-party fees (*i.e.,* it may be infeasible or impracticable, due to disproportionate cost or conflict with United States Federal statute or regulation). Moreover, in the circumstances in which institutions may be able to take advantage of this disclosure exception, the insured institutions remain subject to the Remittance Rule's other requirements, including the continued obligation to provide disclosures and the

[66] 15 U.S.C. 1693b(c).

requirements related to error resolution and cancellation rights.

The Bureau's authority, therefore, is tailored to providing an adjustment for the specific compliance difficulties or challenges that insured institutions face in providing exact disclosure of covered third-party fees that could cause those institutions to reduce or cease offering transfers to certain institutions, which in turn could mean that consumers have less access to remittance transfer services or have to pay more for them. By preserving such access, the exception also could help maintain competition in the marketplace, therefore effectuating one of EFTA's purposes. If the temporary exception expired without the Bureau taking any mitigation measure, the Bureau concludes certain insured institutions may stop sending transfers to some designated recipient's institutions, therefore reducing sender access and competition for those transfers. This potential loss of market participants could be detrimental to senders because it could result in a reduced ability to send transfers to some designated recipient's institutions or an increase the price of remittance transfers.[67]

Technical Corrections

This final rule adopts several technical corrections to the existing regulatory text and commentary. These technical corrections address clerical errors the Bureau found in the Remittance Rule. First, the Bureau is making a technical correction to existing § 1005.32(c)(4) by italicizing the heading of this subsection (''Amount of currency that will be received by the designated recipient''). Second, the Bureau is making a technical correction to existing comment 31(b)(1)(viii)–2 to fix two misspelled cross-references to other sections of the regulatory text and commentary. Third, the Bureau is making a technical correction to existing comment 32(b)(1)–5 by adding a definite article (''the'') that should have been in the commentary text. These technical corrections do not change or alter the meaning of the existing regulatory text and commentary.

The Permanent Exception in § 1005.32(b)(1) and the Bureau's Safe Harbor Countries List

Section 919(c) of EFTA) allows the Bureau to write regulations specific to transfers to certain countries if it has determined that the recipient country does not legally allow, or the methods by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency the designated recipient will receive. If these conditions are met, the provider may use a reasonably accurate estimate of the foreign currency to be received, based on the exchange rate the provider conveyed to the sender at the time the sender initiated the transaction.[68]

The Bureau implemented section 919(c) of EFTA in § 1005.32(b)(1), creating a ''permanent exception for transfers to certain countries.'' The exception is available in two situations. First, § 1005.32(b)(1)(i) permits providers to use estimates if they cannot determine exact amounts because (A) the laws of the recipient country do not permit such a determination, or (B) the method by which transactions are made in the recipient country does not permit such determination. Comment 32(b)(1)–2.i explains that, for example, under the first category, the laws do not permit exact disclosures when the exchange rate is determined after the provider sends the transfer or at the time of receipt. Comment 32(b)(1)–3 offers an example of a situation that qualifies for the methods exception. The example provided is a situation where transactions are sent via international ACH on terms negotiated between the U.S. government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank or other governmental authority after the provider sends the remittance transfer. Comments 32(b)(1)–4.i through iii provide additional examples of situations that do and do not qualify for the methods exception.

Second, § 1005.32(b)(1)(ii) offers a safe harbor allowing remittance transfer providers to disclose estimates instead of exact amounts for remittance transfers to certain countries as determined by the Bureau. However, the Rule does not allow a remittance transfer provider to use this safe harbor if the provider has information that a country's laws or the method by which transactions are conducted in that country in fact permits a determination of the exact disclosure amount.

In 2012, the Bureau issued a list of five countries—Aruba, Brazil, China, Ethiopia, and Libya—that qualify for this safe harbor.[69] The list contains countries whose laws the Bureau has decided prevent remittance transfer providers from determining, at the time the required disclosures must be provided, the exact exchange rate on the date of availability for a transfer involving a currency exchange.[70] The Bureau also explained that the safe harbor countries list was subject to change, and provided instructions for contacting the Bureau to request that countries be added or removed from the list.[71] Since 2012, the Bureau has not added any additional countries to this list.

The Bureau has received feedback over the years from some remittance transfer providers and their trade associations regarding the Bureau's countries list. In the 2019 RFI, the Bureau sought comment on what other countries, if any, should be added to the list because their laws do not permit the determination of exact amounts at the time the pre-payment disclosure must be provided.[72] In response, several industry commenters, including trade associations, banks, and a credit union, made various requests, primarily suggesting that particular countries or regions be added to the list. A few of these commenters requested that the Bureau make other changes to the permanent exception in § 1005.32(b)(1) to address, for example, difficulties in obtaining accurate fee and exchange rate information that they assert occur when sending open network transfers. A group of trade association commenters also suggested that the Bureau loosen and revise its requirements for the inclusion of additional countries on the countries list as a way to mitigate the expiration of the temporary exception.

In the 2019 Proposal, the Bureau did not propose to make any changes to § 1005.32(b)(1) or to the Bureau's safe harbor countries list, but again sought comment on the permanent exception in § 1005.32(b)(1) and on the countries list. The Bureau asked commenters to provide feedback on a number of issues, such as the current composition of the countries list, the substantive criteria by which the Bureau adds countries to the countries list, and the processes and

[67] As the Bureau stated in the 2019 RFI, the Bureau recognizes the value to consumers of being able to send remittance transfers directly from a checking account to the account of a recipient in a foreign country though their bank or credit union. 84 FR at 17974.

[68] EFTA section 919(c)(2), codified at 15 U.S.C. 1693*o*–1(c)(2).

[69] Bureau of Consumer Fin. Prot., *Remittance Rule Safe Harbor Countries List* (Sept. 26, 2012) (Countries List), *http://files.consumerfinance.gov/f/201209_CFPB_Remittance-Rule-Safe-Harbor-Countries-List.pdf.* The Bureau subsequently published that list in the **Federal Register**. 78 FR 66251 (Nov. 5, 2013).

[70] Countries List at 3.

[71] *Id.* at 3–4.

[72] The Bureau also asked that commenters describe how the relevant laws prevent such a determination, and whether the countries were ones for which remittance transfer services were not currently being provided, or whether providers were relying on estimates. 84 FR 17971, 17977 (Apr. 29, 2019).

standards by which the Bureau considers requests to make changes to the countries list (*e.g.,* whether the Bureau should articulate a more detailed list of information and documents that an applicant should submit to make such a request of the Bureau). The Bureau also solicited comment on whether insured institutions expected that new permanent exceptions would address their concerns regarding providing estimates or whether they would additionally need to rely on § 1005.32(b)(1). The Bureau noted in the 2019 Proposal that its focus in this rulemaking was to address the expiration of the temporary exception and the safe harbor threshold. Accordingly, the Bureau cautioned that, in light of its timeframe for doing so, it would give priority to addressing those issues over the issues relating to the countries list.

Five commenters, including one credit union, one regional bank in the Federal Reserve System, and three trade associations addressed § 1005.32(b)(1) and the countries list. Two of the trade association commenters asked the Bureau to revise the procedures the Bureau uses to evaluate requests to change the countries list. One of these commenters suggested specific changes, such as providing a list of specific evidence required for submission when making requests and publishing the Bureau's determinations. This commenter, which represents large banks, along with two other commenters, including a trade association representing credit unions and a regional bank in the Federal Reserve System, also provided suggestions for revising the substantive criteria to determine whether a country qualifies for the permanent exception. One of the trade association commenters, which represents MSBs, asked the Bureau to add two specific countries to the list and provided information supporting that request. Finally, the credit union commenter stated its belief that finalizing the exceptions in proposed § 1005.32(b)(4) and (5) would obviate the need for the permanent exception set forth in § 1005.32(b)(1).

The Bureau noted in the 2019 Proposal that its focus in this rulemaking was to address the expiration of the temporary exception and the normal course of business safe harbor threshold. Therefore, the Bureau is not amending § 1005.32(b)(1) or the countries list as part of this final rule. However, the Bureau will update the process it uses to consider requests to add or remove countries from the countries list. The Bureau also will make determinations in response to the pending request to add two countries to the countries list.

Effective Date

In the 2019 Proposal, the Bureau proposed to have the proposed amendments take effect on July 21, 2020 and sought comment on the proposed effective date. The Bureau also sought comment on any compliance issues that might arise for insured institutions when transitioning from use of the temporary exception to use of the two proposed permanent exceptions set forth in proposed § 1005.32(b)(4) and (5). In addition, the Bureau solicited feedback on whether a mid-year change in the normal course of business safe harbor threshold would pose any complications for providers or cause confusion, and if so, whether the Bureau should make the change to the normal course of business safe harbor threshold effective on some later date, such as January 1, 2021.

Five commenters, including three trade associations and two credit unions, addressed the effective date. The two credit union commenters expressed support for the proposed July 21, 2020 effective date. A trade association representing banks urged the Bureau to establish the earliest possible effective date. One credit union commenter stated that a 30-day implementation period would provide ample time for implementation. Two trade associations representing large banks and other financial institutions urged the Bureau to extend the temporary exception for one year to provide entities time to transition to the new permanent exceptions. Both cited the need for providers to have time to assess their eligibility for the new permanent exceptions. One of these commenters also identified specific challenges associated with implementing the expiration of the temporary exception, such as transitioning from providing estimates, entering into new agreements, and establishing new currency desks. No commenters addressed the mid-year effective date of the revised normal course of business safe harbor thresholds.

The Bureau is finalizing the effective date as proposed. As such, the amendments adopted in this final rule will take effect on July 21, 2020. This effective date ensures that providers can take advantage of the revised normal course of business safe harbor threshold and the new permanent exceptions when the temporary exception expires. As discussed above, EFTA section 919 expressly limits the length of the temporary exception to July 21, 2020. The Bureau, therefore, cannot and is not extending the exception. As such, the temporary exception will expire on July 21, 2020.

The Bureau recognizes, however, the serious impact that the COVID–19 pandemic is having on consumers and the operations of many entities. In addition, the Bureau recognizes that, for insured institutions providing remittance transfers for their customers, the expiration of the statutory temporary exception to the Remittance Rule's requirement to disclose the exact costs of remittance transfers will deepen the potential impact on those customers. Moreover, insured institutions that are remittance transfer providers play a vital role in ensuring that consumers can send money abroad. This access is especially critical in responding to the dramatic effects on the finances of consumers, both in the United States and abroad, as a result of the coronavirus crisis. The Bureau therefore issued a statement on April 10, 2020 to announce that, for remittances that occur on or after July 21, 2020, and before January 1, 2021, the Bureau does not intend to cite in an examination or initiate an enforcement action in connection with the disclosure of actual third-party fees and exchange rates against any insured institution that will be newly required to disclose actual third-party fees and exchange rates after the temporary exception expires.[73]

The Bureau's statement is in addition to the actions it is taking in this final rule. As set forth above in greater detail in the section-by-section analyses of § 1005.32(b)(4) and (5), this final rule adopts a transition period for insured institutions that exceed, as applicable, the 1,000-transfer or 500-transfer thresholds in a certain year for the permanent exceptions found in § 1005.32(b)(4) and (5). These transition periods will allow these institutions to continue provide estimates for a reasonable period of time after they cross the relevant thresholds (whenever that occurs, even if beyond January 1, 2021) while they come into compliance with the requirement to provide exact amounts.

VI. Dodd-Frank Act Section 1022(b) Analysis

A. Overview

The Bureau has considered the potential benefits, costs and impacts of

[73] *See https://files.consumerfinance.gov/f/documents/cfpb_policy-statement_remittances-covid-19_2020-04.pdf.*

this final rule.[74] In developing this final rule, the Bureau has consulted with appropriate Federal agencies regarding the consistency of this final rule with prudential, market, or systemic objectives administered by such agencies as required by section 1022(b)(2)(B) of the Dodd-Frank Act.[75]

This final rule amends several elements of the Remittance Rule. (1) It raises the normal course of business safe harbor threshold for providing remittance transfers in the normal course of business from 100 transfers annually to 500 transfers annually. Under this change, a person that provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year is deemed not to be providing remittance transfers in the normal course of its business and thus is not subject to the Rule. (2) This final rule provides a permanent exception that allows insured institutions to estimate the exchange rate (and other disclosure information that depend on the exchange rate) under certain conditions when sending to a country, principally that (a) the designated recipient of the remittance transfer will receive funds in the country's local currency, (b) the insured institution made 1,000 or fewer transfers in the prior calendar year to that country for which the designated recipients of those transfers received funds in the country's local currency, and (c) the insured institution cannot determine the exact exchange rate for that particular transfer at the time it must provide the applicable disclosures. (3) This final rule provides a permanent exception that permits insured institutions to estimate covered third-party fees (and other disclosure information that depend on the amount of those fees) under certain conditions when sending to a designated recipient's institution, principally that (a) the insured institution made 500 or fewer remittance transfers to that designated recipient's institution in the prior calendar year, or a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees, and (b) the insured institution cannot determine the exact covered third-party fees for that particular transfer at the time it must provide the applicable disclosures.

The Bureau generally considered the benefits, costs, and impacts of this final rule against a baseline in which the Bureau takes no action. The baseline under this approach includes the following: (1) The expiration of the Rule's existing temporary exception, which allows insured institutions to disclose estimates instead of exact amounts to consumers under certain circumstances, and (2) the normal course of business safe harbor threshold of 100 transfers in the current Rule.

The impact analysis discusses two baselines in sequence, as follows. First, for purposes of considering the normal course of business safe harbor threshold of 500 transfers, the Bureau uses a baseline that assumes the temporary exception will expire and the proposed permanent exceptions are not adopted (first baseline). Second, for purposes of considering the permanent exceptions for exchange rate and covered third-party fees, the Bureau uses a baseline in which the temporary exception has expired and the agency has amended the normal course of business safe harbor threshold, so entities that provide 500 or fewer transfers in the previous and current calendar years are excluded but the proposed permanent exceptions are not adopted (second baseline). Because this final rule increases the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually, certain entities that are currently covered by the Rule and are currently benefitting from the temporary exception will be exempt from the Rule entirely. These entities will obtain no additional reduction in burden from the permanent exceptions for the exchange rate and covered third-party fees that the Bureau is adopting in this final rule, because they will be excepted entirely from the Rule, as amended. Given this, the Bureau determines it is appropriate to consider the reduction in burden from the permanent exceptions against a baseline in which the Bureau has amended the normal course of business safe harbor threshold. In other words, the Bureau considers the potential benefits, costs, and impacts of the permanent exceptions only on insured institutions that provide more than 500 transfers in the prior and current calendar years.

With respect to the provisions of this final rule, the Bureau's analysis considers the benefits and costs to remittance transfer providers (covered persons) as well as to senders (consumers). The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to benefits, costs, and impacts, as well as an appropriate baseline or baselines.

B. Data Limitations and Quantification of Benefits, Costs, and Impacts

The discussion in this impact analysis relies on data the Bureau gathered prior to issuing the 2019 Proposal, which include data obtained from industry, other regulatory agencies, and publicly available sources, and in response to its 2019 Proposal. Over the years, the Bureau has done extensive outreach on many of the issues that this final rule addresses, including conducting the Assessment and issuing the Assessment Report as required under section 1022(d) of the Dodd-Frank Act, issuing the 2019 RFI, meeting with consumer groups, holding discussions with a number of remittance transfer providers that are banks and credit unions of different sizes and consulting with other stakeholders before the Bureau issued the 2019 Proposal, and requesting comment in the 2019 Proposal. The Bureau received some data in response to each of these outreach efforts. However, as discussed further below, the data with which to quantify the potential costs, benefits, and impacts of this final rule are generally limited.

Quantifying the benefits of this final rule for consumers presents certain challenges. As discussed further below, this final rule will tend to preserve access to wire transfers, a form of remittance transfer provided overwhelmingly by insured institutions, and will tend to hold steady the pricing of wire transfers for certain, but not necessarily all, consumers who send wire transfers. This final rule allows some insured institutions to continue to estimate, as applicable, the exchange rate, covered third-party fees, and other disclosure information that depend on those amounts when certain circumstances are met, while other insured institutions will be required to provide exact amounts in disclosures. Determining the number of consumers experiencing these different effects and the impact on consumers would require representative market-wide data on the prevalence of consumers who receive exact amounts as opposed to estimated amounts in disclosures required by the

[74] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(A)) requires the Bureau to consider the potential benefits and costs of the regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact of the proposed rule on insured depository institutions and insured credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act (12 U.S.C. 5516); and the impact on consumers in rural areas.

[75] Section 1022(b)(2)(B) of the Dodd-Frank Act (12 U.S.C. 5512(b)(2)(B)) requires that the Bureau consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

Rule, information on the difference between the estimated amounts and the actual amounts, as well as information on the costs to remittance transfer providers of providing the exact disclosure amounts. The Bureau would then need to predict the responses of remittance transfer providers to these costs and the prevalence of consumers who would receive exact amounts versus estimated amounts in disclosures under this final rule. The Bureau does not have the data needed to quantify these effects, nor could it readily quantify the benefits to consumers of these effects.

In light of these data limitations, the analysis below provides both a quantitative and qualitative discussion of the potential benefits, costs, and impacts of this final rule. Where possible given the data available, the Bureau makes quantitative estimates based on economic principles. Where the data are limited or not available, the Bureau relies on general economic principles and the Bureau's experience and expertise in consumer financial markets to provide a qualitative discussion of the potential benefits, costs, and impacts of this final rule.

C. Potential Benefits and Costs to Covered Persons and Consumers

As discussed above in explaining the baselines, the cost to certain insured institutions of the expiration of the temporary exception will be mitigated, although to differing extents, by the increase in the normal course of business safe harbor threshold and the permanent exceptions that permit insured institutions to provide estimates of the exchange rate and covered third-party fees in certain circumstances. In particular, insured institutions that currently provide between 101 and 500 transfers [76] in the prior and current calendar years are no longer covered by the Rule and will therefore no longer be required by the Rule to provide disclosures. The permanent exceptions permitting estimation of exchange rate and covered third-party fees do not have any additional effect on the insured institutions (and their customers) that the Rule no longer covers. The Bureau therefore believes that it is appropriate to consider the benefits and costs to consumers and covered persons of this final rule through considering: (1) The effects of the increase in the normal course of business safe harbor threshold; and (2) the effects of the new permanent exceptions to allow certain insured institutions to provide estimates for the exchange rate, covered third-party fees, and other disclosure information that depend on those amounts under certain circumstances on banks and credit unions that currently provide more than 500 transfers annually.

As explained above, the Bureau is not aware of any MSB remittance transfer providers that will qualify for the 500-transfer normal course of business safe harbor threshold (and thus will not be subject to the Rule). In particular, the Bureau believes that all MSBs that provide remittance transfers provide more than 500 transfers annually. Further, the two permanent exceptions apply only to insured institutions and do not apply to MSBs.

In light of the above, this final rule overall could affect MSBs only indirectly, through shifts in the volume of remittance transfers sent by MSBs relative to the volume sent by insured institutions. The Bureau determines, however, that these shifts will be limited because MSBs provide a somewhat different service than banks and credit unions to meet different consumer demands. For example, as discussed in part II above, in the Assessment Report, the Bureau found that the dollar value of the average remittance transfer provided by MSBs is typically much smaller (approximately $381 on average) than the dollar value of transfers (more than approximately $6,500 on average) provided by banks or credit unions.[77] Thus, in general, if some insured institutions increase the cost of sending remittance transfers or cease sending remittance transfers to certain countries and/or designated recipient's institutions when the temporary exception expires, the Bureau determines that consumers who had been using these insured institutions to send wire transfers will generally shift to other insured institutions and not to MSBs. The Bureau therefore expects only a modest impact relative to the market today on MSBs from the expiration of the temporary exception, with or without this final rule. Thus, the Bureau expects only a modest impact on MSBs from this final rule relative to either baseline.[78]

1. Raising the Normal Course of Business Safe Harbor Threshold to 500 Transfers Annually

This section considers the benefits, costs, and impacts of raising the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually. This analysis proceeds in two steps. First, it examines the information available to the Bureau to determine the likely impact of the change. Second, the analysis then considers the likely benefits, costs, and impacts of this change.

This final rule raises the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually. Under this final rule, a person that provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year will be deemed not to be providing remittance transfers in the normal course of its business and thus will not be subject to the Rule. Based on their respective Call Reports,[79] 414 banks and 247 credit unions provided between 101 and 500 transfers in either 2017 or 2018, but not more than 500 in either year.[80] As such, due to the increase in the normal course of business safe harbor threshold, although these banks and credit unions are currently covered by the Remittance Rule, they will not be covered after this final rule takes effect. These institutions represent 55 percent of banks providing more than 100 transfers and 62 percent of credit unions providing more than 100 transfers. Thus, under this final rule, 661 previously covered institutions no longer need to provide exact disclosures or meet any of the other requirements of the Rule. Comparing these numbers to calculations from 2017 and earlier in the Assessment Report, the number of banks and credit unions providing between 101 and 500 transfers has not changed much from year to year, so is likely to be representative of the relief in burden when this final rule takes effect.

Benefits and Costs to Insured Institutions

As discussed above, 414 banks and 247 credit unions subject to the Rule

[76] As noted above in the section-by-section analysis of § 1005.30(f), ''between 101 and 500'' means 101 or more and 500 or fewer.

[77] Assessment Report at 68, 73.

[78] Entities besides insured institutions and traditional MSBs can be remittance transfer providers, including broker-dealers. The Bureau lacks data on the number of remittance transfers sent by these entities. The Bureau understands that broker-dealers may use wire services provided by banks for remittance transfers and that a broker-dealer's reliance on the temporary exception may mirror that of the banks with whom they are associated.

[79] As noted above in the section-by-section analysis of § 1005.30(f), banks and credit unions are required to submit quarterly ''Call Reports'' by the FFIEC and the NCUA, respectively. For a more detailed description of these reporting requirements, *see* Assessment Report at 24.

[80] The 2018 transfers of a bank or credit union is included in this calculation if it provided between 101 and 500 transfers in either 2017 or 2018, even if, for example, it transferred 100 or fewer transfers in 2018. Similarly, it is excluded if it provided more than 500 transfers in either year.

under the first baseline will no longer incur the compliance costs of the Rule under the 500-transfer normal course of business safe harbor threshold. The Bureau does not have a precise estimate of the costs these institutions will stop incurring. However, the Assessment Report discusses the kinds of compliance costs faced by providers covered by the Rule.[81] These costs include staff training costs, information acquisition costs for disclosures, and error investigation and resolution costs.

In addition, if any banks and credit unions were restricting the number of remittance transfers that they provide to 100 or fewer in order to qualify for the existing normal course of business safe harbor threshold, it is possible they may decide to start providing more remittance transfers after the threshold is increased to 500 transfers. However, the Assessment Report indicates that banks and credit unions did not limit the number of transfers to stay under the existing normal course of business safe harbor threshold, nor did banks or credit unions appear to cease providing remittance transfers because of the Rule.[82] These facts suggest it is unlikely that many institutions will start providing more remittance transfers because of the increase in the normal course of business safe harbor threshold.

Finally, it is possible that some insured institutions will see effects from the increased normal course of business safe harbor threshold because of the preferences of their customers. One possibility is that the customers of insured institutions that are excluded from coverage because of the increase in the normal course of business safe harbor threshold to 500 transfers may decide to use insured institutions that remain subject to the Rule to send remittance transfers. These customers may prefer receiving the protections the Rule affords them (*e.g.,* receiving pre-payment disclosures and receipts, or availing themselves of the Rule's error resolution rights), even if they have to pay more for remittance transfers. Conversely, if the insured institutions that are no longer covered by the Rule due to the increase in the normal course of business safe harbor threshold lower the price they charge to send remittance transfers, some consumers may switch to those institutions. Given the inconvenience of consumers changing from one institution to another institution, such as closing their account at one bank and opening an account at another bank, and the analysis of the impact of the 100-transfer normal course of business safe harbor threshold on the market for remittance transfers discussed in the Assessment Report,[83] the Bureau expects that the net change in remittance transfers and market participation will likely be small for insured institutions that are no longer covered by the Rule because of the increase in the normal course of business safe harbor threshold to 500 transfers.

Benefits and Costs to Consumers

In 2018, insured institutions that would not have been covered if the normal course of business safe harbor threshold was set at 500 transfers provided approximately 141,900 transfers.[84] These transfers represent 1.2 percent of calendar year 2018 transfers by insured institutions providing more than 100 transfers in either 2017 or 2018.[85] The Assessment Report found that these numbers have been fairly stable from year to year before 2018, so are likely to be representative of the decrease in the number of covered transfers when this final rule takes effect.[86]

This final rule has potential benefits and costs to the customers of banks and credit unions providing between 101 and 500 remittance transfers annually. The benefits include potentially lower prices for consumers if the remittance transfer provider passes on to them any reduction in regulatory compliance costs. As discussed in the Assessment Report, at least some bank and credit union providers reported to the Bureau that in response to the Rule, they increased the price they charged consumers to provide remittance transfers.[87] Excepting such entities from the Rule's coverage could result in decreased prices by these banks and credit unions for sending remittance transfers.

The costs to customers of banks and credit unions providing between 101 and 500 remittance transfers annually are the potential loss of the Rule's pre-payment disclosures, which may facilitate comparison shopping, and other Rule protections, including cancellation and error resolution rights. The Bureau does not have the information necessary to quantify these costs. The Bureau has received relatively few complaints from consumers arising from transfers provided by banks and credit unions not covered by the Rule.[88] The Assessment Report found that consumers asserted errors for as many as 1.9 percent of transfers and cancelled between 0.29 and 4.5 percent of transfers depending on the provider.[89] Some banks and credit unions providing between 101 and 500 remittance transfers annually may continue to provide certain of these protections to their customers, although perhaps in a more limited manner than required by the Rule. For example, in response to the 2019 Proposal, as noted in the section-by-section analysis of § 1005.30(f)(2), one bank trade association commenter asserted that entities that are no longer subject to the Remittance Rule will still provide their customers with information about the fees and charges associated with sending a remittance transfer and will also take steps to help consumers when there are errors related to their transfers.

As noted above, it is possible that, to the extent any banks and credit unions intentionally provide 100 or fewer transfers (so as to qualify for the existing normal course of business safe harbor threshold), they may decide to increase their transfers under this final rule. The Assessment Report did not find that banks or credit unions were limiting the number of transfers they provided to stay under the existing 100-transfer normal course of business safe harbor threshold or that banks or credit unions had stopped providing remittance transfers because of the Rule.[90] Thus, the Bureau concludes that there will not be much if any increase in access to remittance transfer services resulting from the increase in the normal course of business safe harbor threshold.

[81] Assessment Report at 117–20.

[82] *Id.* at 133–38.

[83] *Id.* at 133–37.

[84] These numbers are from the bank and credit union Call Reports. The total represents approximately 92,600 bank transfers and 49,300 credit union transfers.

[85] These numbers are from the bank and credit union Call Reports. The dollar volume of the transfers provided by banks providing between 101 and 500 transfers in either 2017 or 2018, but not more than 500 in either year, was $2 billion. Credit unions do not report their dollar volume.

[86] Assessment Report at 76–77, 83–84.

[87] *Id.* at 94.

[88] From April 1, 2013 through December 31, 2017, about 0.4 percent of complaints the Bureau has received are about ''international money transfers'' including remittance transfers. *Id.* at 113–16. The number of complaints may be low because providers are complying with the law. Another possibility is that some consumers who send remittance transfers may have limited English proficiency, and therefore, be less likely to know that they can submit complaints to the Bureau or may be less likely to seek help from a government agency than other consumers. These percentages are based on all complaints about international transfers, not just complaints made when the provider is an insured institution.

[89] *Id.* at 126, 131. These percentages were calculated with data on both insured institutions and other providers. The Assessment Report cautions that the data is not necessarily representative of a particular set of institutions.

[90] *Id.* at 133–38.

Alternatives

In the 2019 Proposal, the Bureau considered an alternative 200-transfer threshold for the normal course of business safe harbor threshold. There were 156 banks and 138 credit unions in 2018 that provided between 101 and 200 transfers in either 2017 or 2018, but not more than 200 in either year, based on their respective Call Reports. As reported above, the corresponding numbers under this final rule are 414 banks and 247 credit unions. Thus, this final rule more than doubles the number of banks that are not subject to the Rule relative to an alternative normal course of business safe harbor threshold of 200 remittance transfers. The corresponding relative increase under this final rule for credit unions is 79 percent. Under the alternative, the banks and credit unions that would not be subject to the Rule represent 21 percent of banks providing more than 100 transfers in either 2017 or 2018 and 35 percent of credit unions providing more than 100 transfers in either 2017 or 2018. As reported above, the corresponding numbers under this final rule are 55 percent for banks and 62 percent for credit unions. The other impacts as described above for a normal course of business safe harbor threshold of 500 transfers would follow for a threshold of 200 transfers.

The total number of transfers in 2018 for banks and credit unions that provided between 101 and 200 transfers in either 2017 or 2018, but not more than 200 in either year, were 19,900 bank transfers and 18,200 credit union transfers. As reported above, the corresponding numbers under this final rule are approximately 92,600 bank transfers and 49,300 credit union transfers. Thus, this final rule more than quadruples the number of bank transfers and more than doubles the number of credit union transfers that are not subject to the Rule relative to the alternative. Under the alternative, the bank and credit union transfers in 2018 that would not be subject to this final rule represent 0.18 percent of transfers by banks providing more than 100 transfers in either 2017 or 2018, and 2.31 percent of transfers by credit unions providing more than 100 transfers in either 2017 or 2018. Overall this is 0.32 percent of transfers in 2018 by insured institutions providing greater than 100 transfers in either 2017 or 2018. The corresponding numbers under this final rule are 0.83 percent for bank transfers and 6.3 percent for credit union transfers. As reported above, this is 1.2 percent of all 2018 transfers by insured institutions providing more than 100 transfers in either 2017 or 2018. Again, the other impacts as described above for a normal course of business safe harbor threshold of 500 transfers would follow for a 200-transfer threshold.

As discussed in greater detail in the section-by-section analysis of § 1005.30(f)(2), the 2019 Proposal solicited comment on basing the normal course of business safe harbor on the percentage of an entity's customers that send remittance transfers. A limitation on the ability of the Bureau to consider the impacts of potential alternatives is the lack of institutional-level data or representative averages for groups of institutions on, among other things, the percentage of customers that send remittance transfers, the average number of remittance transfers sent by customers who send remittance transfers, and the distribution of transfers across customers (*e.g.,* whether sending remittance transfers is concentrated among a small share of customers or dispersed). The numbers of consumers and covered persons affected by different per-customer thresholds would depend on this information. The qualitative effects on consumers and covered persons that would not be covered by the Rule at different normal course of business safe harbor thresholds would be as described above. In the 2019 Proposal, the Bureau requested data and other information that would be useful for quantifying the number of affected consumers and persons sending remittance transfers and the benefits and costs on the affected consumers and persons, but did not receive such information.

2. Permanent Exceptions To Estimate Exchange Rates and Covered Third-Party Fees

This section considers the benefits, costs, and impacts of the two permanent exceptions being adopted in this final rule that will allow remittance transfer providers that are insured institutions to estimate the exchange rate and covered third-party fees in certain circumstances. This analysis proceeds in two steps. First, it examines the information available to the Bureau to determine the likely impact of the expiration of the existing temporary exception. Second, the analysis then considers the likely benefits, costs, and impacts of the permanent exceptions. For reasons explained above, the analysis generally considers only the impacts of the expiration of the temporary exception and adoption of the new permanent exceptions on banks and credit unions that do not qualify for the normal course of business safe harbor threshold, as amended by this final rule (*i.e.,* banks and credit unions that provide more than 500 remittance transfers annually).

According to their Call Reports, of 343 banks providing more than 500 transfers in 2017 or 2018, 48 (14 percent) reported using the temporary exception in 2018.[91] These 48 banks estimate they used the temporary exception for approximately 770,000 transfers in 2018, representing approximately 7.0 percent of all transfers by banks providing more than 500 transfers annually. The Bureau does not have comparable information on the use of the temporary exception for credit unions, and as such, assumes that credit union usage is similar to that of banks.[92] Specifically, assuming that the same proportion of credit unions providing more than 500 transfers annually use the temporary exception as banks and use the temporary exception for the same proportion of transfers as banks, around 21 credit unions would have used the temporary exception for 52,000 transfers. Thus, absent any mitigation to address the potential impact of the expiration of the temporary exception (other than the expansion of the normal course of business safe harbor threshold described above), it is reasonable to estimate that the approximately 70 insured institutions using the temporary exception for approximately 822,000 transfers would need to undertake certain adjustments.[93]

Bank Call Reports do not differentiate between the use of the temporary exception for exchange rates and covered third-party fees. From discussions with some large banks and a trade association representing a number of the largest banks, the Bureau understands that the temporary exception generally is not used by very large banks to estimate exchange rates because providing the exact exchange rate is not difficult for such banks. Over

[91] It is possible that there are more banks using the temporary exception than report it on their Call Reports. For example, smaller bank providers that rely on a larger service provider may not accurately report their usage.

[92] In the 2019 Proposal, the Bureau requested data and other information on the use of the temporary exception by credit unions, and in particular by credit unions providing more than 500 transfers annually. Commenters did not provide any such data or other information.

[93] According to their Call Reports, 34 banks providing between 101 and 500 remittance transfers annually relied on the temporary exception for 6,500 transfers. Assuming proportional use for credit unions providing between 101 and 500 remittance transfers annually, approximately 20 credit unions relied on the temporary exception for 3,500 transfers. For a baseline in which the normal course of business safe harbor threshold was not increased, the impacts on consumers and covered persons considered would also apply to these transfers and covered persons.

the years, banks, credit unions, and their trade associations suggested that there could still exist difficulties for certain large banks to provide exact exchange rates to specific countries. However, they did not provide examples or data on the number of large banks or transfers for which providing the exact exchange rate would be difficult. Accordingly, the analysis assumes that a substantial majority of the remittance transfers and institutions using the temporary exception are using it exclusively for covered third-party fees. In the 2019 Proposal, the Bureau requested data and other information on the share of remittance transfers that rely on the temporary exception to estimate exchange rates alone, covered third-party fees alone, and both exchange rates and covered third-party fees, but did not receive relevant information.

Permanent Exception for Estimation of the Exchange Rate by an Insured Institution

This final rule provides a permanent exception that allows insured institutions to estimate the exchange rate (and other disclosure information that depend on the exchange rate) under certain conditions when sending to a country. Principally, these conditions are that the designated recipient of the remittance transfer will receive funds in the country's local currency and (a) the insured institution made 1,000 or fewer transfers in the prior calendar year to that country where the designated recipients received funds in the country's local currency, and (b) the insured institution cannot determine the exact exchange rate for that particular transfer at the time it must provide the applicable disclosures.

The information available to the Bureau indicates that insured institutions primarily use the temporary exception to estimate covered third-party fees. However, as discussed below, the Bureau understands that certain insured institutions may incur additional costs in order to disclose exact exchange rates. Further, these costs, as well as the willingness to incur them, may differ across insured institutions. Thus, under the second baseline (*i.e.,* baseline in which the temporary exception expires and the Bureau raises the normal course of business safe harbor threshold to 500 transfers), it is possible that the requirement to disclose exact exchange rates may cause some insured institutions to cease providing transfers to certain countries to the extent that these institutions will not qualify for the normal course of business safe harbor threshold, as amended, and do not qualify for the new permanent exception that allows insured institutions to estimate the exchange rate under certain conditions. The permanent exception for estimating the exchange rate would tend to mitigate the cost increases and reductions in the provision of remittance transfers at insured institutions that would otherwise occur.

Benefits and Costs to Insured Institutions

Under the second baseline, insured institutions that will continue to be covered by the Rule (because they send remittance transfers in excess of the 500-transfer threshold in the normal course of their business) and that have been using the temporary exception to estimate exchange rates will either need to provide exact exchange rate disclosures or stop sending those transfers. To provide exact exchange rate disclosures, these insured institutions will incur certain costs. An insured institution may need to establish and maintain currency-trading desk capabilities and risk management policies and practices related to the foreign currency and country at issue or to use service providers, correspondent institutions, or persons that act as the insured institution's agent. These additional costs may also differ across insured institutions, due to differences in existing arrangements with service providers or correspondent institutions, the ability to negotiate changes in those arrangements, the expertise of existing staff, and the likely volume of transfers. Insured institutions may also differ in the level of commitment to sending remittance transfers to particular countries, based on the needs of their customers, and thus their willingness to incur additional costs. Overall, the requirement to disclose exact exchange rates under the second baseline could cause some insured institutions to cease providing transfers to certain countries. These effects would likely differ across insured institutions.

The Bureau determines that adopting the permanent exception for estimating the exchange rate will tend to mitigate these costs and impacts. The Bureau asked for information in its 2019 Proposal about the percentage of transfers by recipient country that rely on the temporary exception for exchange rates and the portion of those transfers that could rely on the permanent exception being proposed. It did not receive this information. However, the Bureau understands that insured institutions predominantly use the temporary exception to estimate covered third-party fees, rather than exchange rates. Thus, the Bureau concludes that the additional costs under the second baseline would be relatively modest overall, and adopting the permanent exception will mitigate most of the increase that would otherwise occur. Further, as noted in the 2019 Proposal, it is the Bureau's understanding from discussion with some large banks and a trade association representing a number of the largest banks that providing exact exchange rates is not generally difficult for very large banks. However, several trade association commenters asserted, in response to the 2019 Proposal, that large banks may have difficulties providing exact exchange rates in certain circumstances. Thus, to the extent that very large banks would have an advantage under the second baseline in providing transfers to particular countries, the permanent exception for the exchange rate will mitigate this advantage by allowing smaller institutions to continue to estimate exchange rates in disclosures for certain remittance transfers.

As discussed above, in the 2019 Proposal, the Bureau requested data and other information about the share of remittance transfers that relied on the temporary exception to estimate exchange rates alone, and both exchange rates and covered third-party fees. The Bureau did not receive such information.

Further, the Bureau recognizes that the magnitudes of the effects of the expiration of the temporary exception to estimate the exchange rate and the mitigating effects of the permanent exception for estimating the exchange rate are uncertain. Thus, the potential additional costs under the second baseline from the inability to estimate exchange rates by certain insured institutions may be larger than the Bureau has assumed. As a result, the permanent exception to estimate exchange rates may not mitigate all of the impact of the expiration of the temporary exception.

For reasons discussed in the section-by-section analysis of § 1005.32(b)(4), under this final rule, if an insured institution in the prior calendar year did not exceed the 1,000-transfer threshold to a particular country, but does exceed the 1,000-transfer threshold in the current calendar year, the insured institution will have a reasonable amount of time after exceeding the 1,000-transfer threshold to begin providing the exact exchange rate (assuming it cannot rely on another exception in § 1005.32 to estimate the exchange rate). This final rule provides

that the reasonable amount of time must not exceed the later of six months after exceeding the 1,000-transfer threshold in the current calendar year or January 1 of the next year.

The transition period may benefit insured institutions by giving them some additional time in which to provide remittance transfers while also establishing additional agreements with correspondent institutions or third-party service providers, or develop their own systems to provide exact exchange rates. The transition period also ensures that an insured institution that estimates exchange rates and inadvertently exceeds the 1,000-transfer threshold will not violate the Rule during the transition period. The Bureau does not have information on how frequently institutions are below 1,000 transfers to a particular country in one year and exceed the 1,000-transfer threshold in a subsequent year or how common it is for an insured institution to exceed the 1,000-transfer threshold by a large number of transfers. The Bureau understands that relatively few insured institutions provide most of the remittance transfers that insured institutions provide. In addition, while some insured institutions provide remittance transfers to many countries on their customers' behalf, some countries are the destination of far more remittance transfers than others.[94] Thus, the Bureau understands that the number of remittance transfers that most insured institutions provide to an individual country likely stays consistently above or below 1,000 transfers. It is not possible, however, to determine from these facts how many insured institutions will rely on the transition period.

Benefits and Costs to Consumers

Under the second baseline, in which the temporary exception expires and the Bureau raises the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually, the preferred insured institution for some consumers might not be able to provide an exact exchange rate disclosure for transfers to certain countries, for reasons discussed above. Some consumers, therefore, would need to seek out an alternate remittance transfer provider to send transfers to those countries. The Bureau understands that to the extent that a consumer's preferred insured institution cannot provide the exact exchange rate, there would likely be a less preferred insured institution that could provide the exact exchange rate and send the transfer.[95]

Under this final rule, due to the adoption of the permanent exception for estimating the exchange rate, more consumers will be able to continue to use their preferred insured institution to send transfers. These consumers may also be able to do so at lower prices under the Rule if, without the Rule and under the second baseline, an insured institution would pass on the higher costs incurred to obtain exact exchange rate information.

The cost to these consumers is that they will receive estimated disclosures. Disclosures that include exact exchange rate information make it easier for a consumer to know whether a designated recipient is going to receive an intended sum of money, or the amount in U.S. dollars that the consumer must send to deliver a specific amount of foreign currency to a designated recipient. Requiring the disclosure of exact exchange rates may also make it easier for consumers to compare prices across providers. The permanent exception for estimating exchange rates may therefore impose a cost on certain consumers in the form of these foregone benefits. However, these costs may not be large to the extent that there is not a great difference between the estimated amounts and the actual amounts. In addition, the estimated amount may turn out to be the actual amount. If the estimated and actual amounts are frequently the same, the costs to consumers will be low.

Overall, however, the evidence available to the Bureau suggests that the costs to consumers of allowing insured institutions to use the permanent exception to estimate the exchange rate are not likely to be significant. Further, the Bureau believes the permanent exception for estimating the exchange rate will be used for only a small portion of all remittance transfers sent by insured institutions. As such, the potential negative impact on comparison shopping noted above may be small. Lastly, as discussed in the Assessment Report and noted above, the Bureau reviewed evidence from its consumer complaints database and did not find evidence of significant consumer complaints regarding the use of estimates for exchange rates or for covered third-party fees.[96]

As discussed above, this final rule provides that if an insured institution in the prior calendar year did not exceed the 1,000-transfer threshold to a particular country but does exceed the 1,000 transfer threshold in the current calendar year, the insured institution has a reasonable amount of time after exceeding the 1,000-transfer threshold to begin providing exact exchange rates in disclosures (assuming that it cannot rely on another exception in § 1005.32 to estimate the exchange rate). While the Bureau does not have information on how many transfers might be affected, it expects the number of transfers to be relatively small and, as such, the costs to consumers of receiving estimates for additional transfers is likely to be limited. Further, by allowing providers additional flexibility, the transition period adopted in this final rule may help reduce costs. In turn, these cost savings may be passed on to consumers, and help to maintain consumer access to the extent that the extra flexibility the transition period will provide make it less likely that insured institutions would stop providing remittance transfers to stay below the 1,000-transfer threshold.

Permanent Exception for Estimation of Covered Third-Party Fees by an Insured Institution

As noted above, under the second baseline (*i.e.,* the baseline in which the temporary exception expires and the Bureau raises the normal course of business safe harbor threshold to 500 transfers), the Bureau estimates that approximately 70 insured institutions would need to stop providing estimated disclosures for approximately 822,000 transfers. Based on its analysis of available information, the Bureau expects that many of these insured institutions could form additional relationships or set up new systems to disclose exact covered third-party fees for a large portion of the transfers currently using the temporary exception

[94] *See* Assessment Report at 60, 77.

[95] These consumers may also consider using an MSB to send transfers if it is too difficult or expensive to find an insured institution that can send the transfer. MSBs are generally able to provide exact exchange rate information for the reasons discussed in part II above. Some MSBs compete with insured institutions for high-value transfers in some corridors. However, MSBs generally provide a somewhat different service than banks and credit unions to meet different consumer demands, as reflected in the differences in the average transfer amount for MSBs ($381) and banks and credit unions ($6,500) (Assessment Report at 68, 73). The Bureau therefore considers that there would be relatively few consumers, under the second baseline, who use an MSB because they find it too difficult or expensive to use an insured institution.

[96] Assessment Report at 113–16. The Assessment Report categorizes complaints into the type of complaint and estimates for exchange rates or for covered third-party fees were not an important source of complaint by themselves. However, 7 percent of complaints were for the ''Wrong amount charged or received'' and 0.5 percent for ''Unexpected or other fees'' which may contain complaints related to inaccurate estimates.

to estimate covered third-party fees. As described in detail in the 2019 Proposal, in formulating the proposed permanent exception for covered third-party fees, the Bureau held discussions with banks and a trade association representing a number of the largest banks, reviewed comments from the 2019 RFI, and analyzed Call Reports from banks that have reduced their reliance on the temporary exception. Based on the information received from these sources, the Bureau was preliminarily persuaded that banks would be willing to set up the relationships or establish other systems (such as international ACH) necessary to their ability to disclose exact covered third-party fees and reduce their reliance on estimates to around half of the number of transfers for which they used the temporary exception in 2018. The Bureau has no information that would suggest a different conclusion for credit unions. Based on the limited information available, the Bureau determines that insured institutions will implement these operational changes and provide exact disclosures for around half of the number of transfers for which they used the temporary exception in 2018, and their customers will gain the benefit of receiving exact disclosures. However, implementing these operational changes is likely to come at some cost to insured institutions, and some of these costs could be passed on to consumers. Note that these costs are not costs of this final rule; they are costs incurred under the baseline in which the temporary exception expires and the Bureau increases the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually.

There are a limited number of outcomes for the remaining half of transfers for which insured institutions used the temporary exception in 2018 and which could not be sent with estimated disclosures under the second baseline. Consumers requesting these transfers would need to find an alternative remittance transfer provider. The alternative remittance transfer provider would most likely be an insured institution that provides enough remittance transfers to the designated recipient's institution that the sending insured institution either has relationships or would form additional relationships or set up new systems to provide exact covered third-party fee disclosures. The alternative provider might also be an MSB. As discussed above, however, MSBs provide a somewhat different service than banks and credit unions to meet different consumer demands. This would tend to reduce any substitution from insured institutions to MSBs. In either case, consumers would lose the convenience and other benefits of transferring with their preferred bank or credit union. Finally, it is also possible that no insured institution or MSB (or combination of MSBs), at any price, could send to certain designated recipient's institutions. This would occur if no insured institution is able to provide exact disclosures and no MSB (or combination of MSBs) is able to transfer high enough amounts to certain designated recipient's institutions.

The Bureau does not have the information necessary to quantify how many transfers would fall into each category. For purposes of the analysis below, the Bureau assumes that under the second baseline, customers of an insured institution that would no longer send remittance transfers to a designated recipient's institution would generally search for and find a different insured institution that would send the transfer. The Bureau considers it unlikely that no insured institution or MSB (or combination of MSBs), at any price, could send the desired amount of funds to a designated recipient's institution. In response to the 2019 Proposal, a group of trade association commenters representing large banks noted that the Bureau may be overly optimistic in this assumption that other remittance transfer providers would still be able to send transfers and that the costs of switching remittance transfer providers may be high for consumers. Note again that these are all costs incurred under the baseline in which the temporary exception expires without the new exception. If the costs under the baseline would be larger than the Bureau predicts, the mitigation of these costs by the new permanent exception for estimating covered third-party fees would also be larger.

Transfers that are actually provided under the second baseline will fall into three main categories relative to covered third-party fees: (1) Transfers that are below the threshold for covered third-party fees, and therefore disclose estimates, but under the second baseline would have been provided with exact disclosures at a higher price or by a remittance transfer provider other than the consumer's first choice; (2) transfers that are above the threshold for covered third-party fees, and so will be provided with exact disclosures for such fees under both this final rule and the second baseline; or (3) transfers that do not receive exact disclosures because a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees and the insured institution cannot determine the exact covered third-party fees for that particular transfer at the time it must provide the applicable disclosures. Relative to the baseline, in which all bank or credit union transfers that take place would have to provide exact disclosures, only (1) and (3) represent a change considered for the costs or benefits of the permanent exception for estimating covered third-party fees because (2) represents no impacts relative to the second baseline.

The Bureau has no evidence that any United States Federal statute or regulation prohibits an insured institution from being able to determine exact covered third-party fees for any remittance transfer. Thus, to the best of the Bureau's knowledge, no transfers fall into category (3) above. To the extent there are transfers that fall under this provision, there are benefits to both insured institutions and consumers from the added flexibility. Insured institutions benefit by still being able to provide transfers that they could not otherwise provide. Consumers benefit by maintaining access to remittance transfers at their preferred institution that might not take place otherwise.

Benefits and Costs to Insured Institutions

As stated above, under the baseline in which the temporary exception expires and the Bureau raises the normal course of business safe harbor threshold to 500 transfers, the Bureau estimates that approximately 70 insured institutions would need to stop providing estimated disclosures for approximately 822,000 transfers. While the Bureau does not have market-wide information, the information provided by certain large banks suggests that there are few designated recipient's institutions to which these large banks individually send more than 500 transfers in a year and with which these large banks would not be able or willing to set up a relationship sufficient to provide exact disclosures of covered third-party fees. Based on this information, the Bureau expects that under both the second baseline and the permanent exception for estimating covered third-party fees, these 70 institutions will form roughly the same number of relationships and will provide exact disclosures for about half of these transfers. Forming these relationships comes at some cost to insured institutions, and some of these costs could be passed on to consumers. One trade association commenter representing banks questioned the Bureau's expressed expectation in the 2019 Proposal that insured institutions

would form new relationships or contract with service providers to provide exact disclosures. However, service providers for insured institutions are often insured institutions themselves making their correspondent network available to smaller and more regional institutions.

As explained above, under the second baseline, the other half of the remittance transfers for which estimated disclosures are currently provided would no longer be provided by the insured institutions that currently send them but would be sent by different insured institutions.[97] Based on the information available from certain large banks, under the permanent exception for estimating covered third-party fees, the Bureau expects that the insured institutions that currently send these transfers would continue to send them. In response to the 2019 Proposal, one large credit union commenter estimated that two-thirds of its current remittance transfers would be covered under the new permanent exception. Based on the information provided in its comment letter, it appears that the credit union had not yet sought to contract with a large bank, join the SWIFT network to be eligible to form RMAs, or otherwise form correspondent relationships, as would be necessary under the expiration of the temporary exception if it wished to continue to provide remittance transfer at its current levels.

For transfers under category (1) above, insured institutions can provide estimated disclosures under the permanent exception concerning covered third-party fees, so these insured institutions would not need to form additional relationships. These insured institutions would benefit from not turning away potential customers and by being able to continue providing a valuable service to their customers. These benefits might be significant, although they are difficult to quantify.

This final rule also provides a transition period for insured institutions that exceed the 500-transfer normal course of business safe harbor threshold under § 1005.32(b)(5) in the current calendar year, which will allow them to continue to provide estimates of covered third-party fees for a reasonable period of time (*i.e.,* the later of six months or January 1 of next year) while they come into compliance with the requirement to provide exact covered third-party fees (assuming that these institutions cannot rely on another exception in § 1005.32). The transition period may benefit insured institutions by giving them some additional time in which to provide remittance transfers while relying on the permanent exception for covered third-party fees while also establishing additional agreements with other institutions or develop systems to provide exact covered third-party fees. The transition period also ensures that an insured institution that estimates covered third-party fees and inadvertently exceeds the 500-transfer threshold will not violate the Rule during the transition period. The Bureau does not have information on how frequently institutions move from below the threshold in one year to exceeding the 500-transfer threshold in a subsequent year. However, the Bureau expects that relatively few transfers will be affected because remittance transfers are generally concentrated in a few corridors and among relatively few large banks, which will always be above the 500-transfer threshold.

Benefits and Costs to Consumers

Under category (1) above, certain senders of remittance transfers would have been provided with exact disclosures under the second baseline but at a higher price or by a remittance transfer provider other than the consumer's first choice. As discussed above, the Bureau expects that the permanent exception for estimating covered third-party fees if an insured institution makes 500 or fewer transfers to a designated recipient's institution in the prior calendar year will mitigate all or almost all of the costs to consumers from the loss of access to transfers to certain designated recipient's institutions under the second baseline. These remittance transfers represent the most important benefit of the permanent exception for estimating covered third-party fees for consumers. While the Bureau does not have the information to quantify the number of transfers in this category or the exact value to consumers, the benefit to consumers of continued access is potentially large.

Under category (1) above, consumers will receive disclosures containing estimates. As discussed above in considering the impact of the permanent exception for the exchange rate, the use of estimates for covered third-party fees may make it more difficult for consumers to engage in comparison shopping and impose a cost on consumers by making disclosures less accurate.

As discussed above, this final rule provides that if an insured institution in the prior calendar year did not exceed the 500-transfer threshold to a particular country but does exceed the 500-transfer threshold in the current calendar year, the insured institution has a reasonable amount of time after exceeding the 500-transfer threshold to begin providing exact third-party fees in disclosures. While the Bureau does not have information on how many transfers might be affected, it expects the number of transfers to be relatively small and, as such, the costs to consumers of receiving estimates for additional transfers to be limited. Further, by allowing providers additional flexibility, the transition period may help reduce costs, which may be passed on to consumers, and maintain consumer access to the extent that the extra flexibility makes it less likely that insured institutions would stop providing transfers to stay below the threshold.

Alternatives

For purposes of considering the effects of the permanent exceptions that allow insured institutions to estimate exchange rates and covered third-party fees under certain circumstances, the Bureau used the second baseline (*i.e.,* the baseline in which the temporary exception expires and the Bureau amended the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually). The Bureau instead considered the effects of these permanent exceptions relative to the first baseline, under which the temporary exception expires and the Bureau maintains the existing normal course of business safe harbor threshold at 100 transfers annually. In this case, the permanent exceptions that would allow institutions to estimate exchange rates and covered third-party fees would have effects on insured institutions that provide between 101 and 500 remittance transfers per year and the consumers on whose behalf these institutions send remittance transfers. These effects would be in addition to the effects on insured institutions that provide more than 500 remittance transfers per year and the consumers on whose behalf these insured institutions send remittance transfers.

As discussed above, 414 banks and 247 credit unions provided between 101 and 500 transfers in either 2017 or 2018, but not more than 500 in either year. In 2018, they respectively sent about 92,600 and 49,300 transfers. These banks and credit unions would remain covered by the Rule under the first baseline since the normal course of business safe harbor threshold remains at 100 transfers. However, all of these insured institutions would necessarily meet the respective 500-transfer and 1,000-transfer threshold requirements in the permanent exceptions. Thus, all of

[97] At least one commenter on the 2019 Proposal noted the large cost of this dislocation.

these insured institutions could continue to disclose estimates for exchange rates and covered third-party fees to the extent that they already do so. The ability to disclose estimates under the permanent exceptions would mitigate costs relative to the first baseline.

The insured institutions providing between 101 and 500 transfers currently provide error resolution rights and meet the other conditions of the Rule. These insured institutions would continue to do so under the first baseline and with the alternative rule considered here, *i.e.,* that provided only the permanent exceptions for estimating exchange rates and covered third-party fees.

D. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

As stated above, based on their Call Reports, 414 banks and 247 credit unions provided between 101 and 500 transfers in either 2017 or 2018, but not more than 500 in either year. Of these, 386 banks and all 247 credit unions had $10 billion or less in total assets in 2018. Some of these insured institutions currently provide exact disclosures (based on Call Report data) and all of them would have to provide exact disclosures under the first baseline (*i.e.,* the no-action baseline). None of these insured institutions will be covered by the Rule under the increase in the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually. It follows that a large majority of the banks and all of the credit unions affected by the change in the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually have $10 billion or less in assets. Thus, the impacts of the increase in the normal course of business safe harbor threshold, described above, will also generally be the specific impacts for depository institutions and credit unions with $10 billion or less in total assets.

In addition, 190 banks and 142 credit unions with $10 billion or less in assets in 2018 provided more than 500 transfers in 2017 or 2018. As discussed above, some of these banks and credit unions currently provide exact disclosures, and all of them will have to provide exact disclosures under the second baseline. These banks and credit unions will not be directly affected by the change in the normal course of business safe harbor threshold. They may be affected, compared to the second baseline, by the adoption of the permanent exceptions for estimating the exchange rate and covered third-party fees in this final rule. According to the bank Call Report data, only 18 of these banks reported using the temporary exception, and they did so for approximately 66,600 transfers. As discussed above, the Bureau understands that remittance transfer providers that are smaller depository institutions and credit unions obtain information about exchange rates and covered third-party fees from a limited number of service providers that are either very large insured institutions or large nonbank service providers. Given this reliance, the impacts of the permanent exceptions, described above, will also generally be the specific impacts for depository institutions and credit unions with $10 billion or less in total assets.

2. Impact on Consumers in Rural Areas

Consumers in rural areas may experience different impacts from this final rule than other consumers. The Bureau has discretion to define rural areas as appropriate for this impact analysis. For the impact analysis in this section, the Bureau used its 2018 rural counties list.[98] The Bureau compared the address each bank and credit union reported on its Call Report with this rural county list to determine if that bank or credit union was located in a rural county. This comparison is limited to the location listed in the Call Report, which is generally the headquarters of the bank or credit union. There are likely rural branches of insured institutions with headquarters located in non-rural areas, so this comparison captures only a portion of the impact of this final rule on consumers in rural areas.

According to the Call Reports, 83 banks provided between 101 and 500 remittance transfers in either 2017 or 2018, but not more than 500 in either year, and were headquartered in rural counties. These banks provided 17,000 transfers in 2018. Further, 15 credit unions provided between 101 and 500 remittance transfers in either 2017 or 2018, but not more than 500 in either year, and were headquartered in rural counties. These credit unions provided 2,200 transfers. Finally, three banks provided more than 500 transfers in either 2017 or 2018, were located in rural areas, and reported relying on the temporary exception. These banks reported that they relied on the temporary exception for 2,000 transfers total. Credit unions do not report reliance on the temporary exception, but assuming reliance on the temporary exception is similar for credit unions, the four credit unions that provided more than 500 transfers in either 2017 or 2018 and were located in rural areas would have used the temporary exception for approximately 900 transfers.

Consumers in rural areas may have access to fewer remittance transfers providers and therefore may benefit more than other consumers from a rule change that keeps more insured institutions in the market or helps reduce costs to the extent that cost reductions are passed on to consumers. However, these consumers will also disproportionately lose consumer protections relative to other consumers, under the second baseline, to the extent that the banks and credit unions that provide remittance transfers to these consumers will be disproportionately excluded from the Rule (due to the increase in the normal course of safe harbor threshold) or use the permanent exceptions adopted in this final rule to estimate covered third-party fees and the exchange rate. As stated above, the 414 banks and 247 credit unions that provided between 101 and 500 transfers in either 2017 or 2018, but not more than 500 in either year, represent 55 percent of the banks and 62 percent of the credit unions that provided more than 100 transfers in both years. In rural areas, the corresponding 83 banks and 15 credit unions represented 75 percent of the banks and 79 percent of the credit unions that provided more than 100 transfers in both years in rural areas. Thus, the increase in the normal course of business safe harbor threshold will have somewhat larger effects in rural areas in both preserving access to remittance transfer providers and possibly reducing the protections provided by the Rule, as described above.

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[99] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small

[98] *See https://www.consumerfinance.gov/policy-compliance/guidance/rural-and-underserved-counties-list/.*

[99] 5 U.S.C. 601 *et seq.* The Bureau is not aware of any small governmental units or not-for-profit organizations to which this final rule would apply.

Business Act.[100] Potentially affected small entities include insured institutions that have $600 million or less in assets and that provide remittance transfers in the normal course of their business.[101]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[102] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[103]

At the proposed rule stage, the Bureau determined that an IRFA was not required because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. The Bureau did not receive any comments on this analysis. For this final rule, the Bureau also determines that this determination is accurate. Under the no-action baseline, the temporary exception expires, and therefore no remittance transfer providers—including small entities—will be able to provide estimates using that exception. Under this final rule, certain small entities that would otherwise be covered by the Remittance Rule will not be covered by the Rule and certain other small entities will be able to provide estimates in certain circumstances. Thus, the Bureau concludes that this final rule will only reduce burden on small entities relative to the baseline.[104]

Accordingly, the Director certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[105] Federal agencies are generally required to seek approval from the Office of Management and Budget (OMB) for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor, and, notwithstanding any other provision of law, a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB.

This final rule amends 12 CFR part 1005 (Regulation E), which implements EFTA. The Bureau's OMB control number for Regulation E is 3170–0014.

Under Regulation E, the Bureau generally accounts for the paperwork burden for the following respondents pursuant to its administrative enforcement authority: Federally insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain non-depository institutions. The Bureau and the Federal Trade Commission (FTC) generally both have enforcement authority over non-depository institutions subject to Regulation E. Accordingly, the Bureau would generally allocate to itself half of this final rule's estimated reduction in burden on non-depository financial institutions subject to Regulation E, but estimates no reduction in burden on these institutions from this final rule. Other Federal agencies, including the FTC, are responsible for estimating and reporting to the Office of Management and Budget (OMB) the paperwork burden for the institutions for which they have enforcement and/or supervision authority. They may use the Bureau's burden estimation methodology, but need not do so.

The Bureau concludes that the overall impact of the increase in the normal course of business safe harbor threshold from 100 transfers annually to 500 transfers annually and allowing limited use of estimates for covered third-party fee and exchange rate disclosures is small. In addition, the Bureau concludes that this final rule will have no material change in burden on remittance transfer providers that are non-depository financial institutions. The Bureau recognizes, however, that it lacks data with which to determine the precise impact of this final rule. The Bureau requested comments or data concerning information that would assist the Bureau with making a determination on the impact of allowing limited use of estimates in certain disclosures on the Bureau's current collection of information pursuant to Regulation E, but received no comments on this aspect of the 2019 Proposal.

Current Total Annual Burden Hours on Bureau Respondents, Regulation E: 3,445,033.

Current Total Annual Burden Hours on Bureau Respondents, Subpart B only: 1,471,808.

Estimated Total Annual Burden Hours on Bureau Respondents under the Rule, Subpart B only: 1,448,938.

Estimated Change in Total Annual Burden Hours on Bureau Respondents under the Rule: −22,870.

The Bureau has determined that this final rule does not contain any new or substantively revised information collection requirements as defined by the PRA and that the burden estimate for the previously approved information collections should be revised as explained above. The Bureau will file a request with OMB to adjust the burden as discussed above. This request will be filed under OMB control number 3170–0014.

IX. Congressional Review Act

Pursuant to the Congressional Review Act,[106] the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to this final rule's published effective date. The Office of Information and Regulatory Affairs has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

X. Signing Authority

The Director of the Bureau, having reviewed and approved this document is delegating the authority to electronically sign this document to

[100] 5 U.S.C. 601(3) (the Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment).

[101] Small Bus. Admin., *Table of Small Business Size Standards Matched to North American Industry Classification System Codes, https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[102] 5 U.S.C. 603 through 605.

[103] 5 U.S.C. 609.

[104] In general, given the expiration of the temporary exception and this final rule, some small entities that currently provide estimates will be able to continue to provide estimates for some or all of their remittance transfers and some will need to begin providing exact disclosures. Using the bank Call Reports, however, the Bureau finds that only one small bank will need to begin providing exact disclosures. Specifically, the Bureau finds that there were 82 banks in 2018 with assets under $600 million covered by the Rule (because they provided greater than 100 transfers in 2017 or 2018). Of these banks, only 12 send an amount of transfers that exceeds this final rule's normal course of business safe harbor threshold of 500 transfers. Further, only one of these 12 banks currently reports relying on the temporary exception. Thus, only one small bank will need to begin providing exact disclosures, even without the exceptions on use of estimates. Using the credit union Call Reports, the Bureau finds that there were 133 credit unions with assets under $600 million covered by the Rule in 2018 (because they provided more than 100 transfers in 2017 or 2018). Of these credit unions, only 30 send an amount of transfers that exceeds this final rule's normal course of business safe harbor threshold of 500 transfers. The credit union Call Reports do not report utilization of the temporary exception. However, since one of the 12 small banks that are covered by this final rule uses the temporary exception, the Bureau considers it reasonable to suppose that approximately two of the 30 small credit unions that are covered by this final rule use the temporary exception.

[105] 44 U.S.C. 3501 *et seq.*

[106] 5 U.S.C. 801 *et seq.*

Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

List of Subjects in 12 CFR Part 1005

Automated teller machines, Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation E, 12 CFR part 1005, as set forth below:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693*o*–1.

Subpart B—Requirements for Remittance Transfers

■ 2. Amend § 1005.30 by revising paragraphs (f)(2)(i)(A) and (B) and (f)(2)(ii), and adding paragraph (f)(2)(iii), to read as follows:

§ 1005.30 Remittance transfer definitions.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(A) Provided 500 or fewer remittance transfers in the previous calendar year; and

(B) Provides 500 or fewer remittance transfers in the current calendar year.

(ii) *Transition period—coming into compliance.* Beginning on July 21, 2020, if a person that provided 500 or fewer remittance transfers in the previous calendar year provides more than 500 remittance transfers in the current calendar year, and if that person is then providing remittance transfers for a consumer in the normal course of its business pursuant to paragraph (f)(1) of this section, the person has a reasonable period of time, not to exceed six months, to begin complying with this subpart. Compliance with this subpart will not be required for any remittance transfers for which payment is made during that reasonable period of time.

(iii) *Transition period—qualifying for the safe harbor.* If a person who previously provided remittance transfers in the normal course of its business in excess of the safe harbor threshold set forth in this paragraph (f)(2) determines that, as of a particular date, it will qualify for the safe harbor, it may cease complying with the requirements of this subpart with respect to any remittance transfers for which payment is made after that date. The requirements of the Act and this part, including those set forth in §§ 1005.33 and 1005.34, as well as the requirements set forth in § 1005.13, continue to apply to transfers for which payment is made prior to that date.

* * * * *

■ 3. Amend § 1005.32 by:

■ A. Adding paragraphs (b)(4) and (5);

■ B. In paragraph (c), removing ''(a) or (b)(1)'' and adding in its place ''(a) or (b)(1), (4), or (5)'';

■ C. In paragraph (c)(4), italicizing the heading ''Amount of currency that will be received by the designated recipient''.

The additions read as follows:

§ 1005.32 Estimates.

* * * * *

(b) * * *

(4) *Permanent exception for estimation of the exchange rate by an insured institution.* (i) Except as provided in paragraph (b)(4)(ii) of this section, for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for a remittance transfer to a particular country in accordance with paragraph (c) of this section for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii), if the designated recipient of the remittance transfer will receive funds in the country's local currency and all of the following conditions are met:

(A) The remittance transfer provider is an insured institution as defined in paragraph (a)(3) of this section;

(B) At the time the insured institution must provide, as applicable, the disclosure required by § 1005.31(b)(1) through (3) or § 1005.36(a)(1) or (2), the insured institution cannot determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for that remittance transfer;

(C) The insured institution made 1,000 or fewer remittance transfers in the prior calendar year to the particular country for which the designated recipients of those transfers received funds in the country's local currency; and

(D) The remittance transfer is sent from the sender's account with the insured institution; provided however, for the purposes of this paragraph, a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

(ii) The disclosures in § 1005.31(b)(1)(v) through (vii) may be estimated under paragraph (b)(4)(i) of this section only if the exchange rate is permitted to be estimated under paragraph (b)(4)(i) of this section and the estimated exchange rate affects the amount of such disclosures.

(5) *Permanent exception for estimation of covered third-party fees by an insured institution.* (i) Except as provided in paragraph (b)(5)(ii) of this section, for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided for a remittance transfer to a particular designated recipient's institution in accordance with paragraph (c) of this section for the amounts required to be disclosed under § 1005.31(b)(1)(vi) through (vii), if all of the following conditions are met:

(A) The remittance transfer provider is an insured institution as defined in paragraph (a)(3) of this section;

(B) At the time the insured institution must provide, as applicable, the disclosure required by § 1005.31(b)(1) through (3) or § 1005.36(a)(1) or (2), the insured institution cannot determine the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for that remittance transfer;

(C) The insured institution made 500 or fewer remittance transfers in the prior calendar year to that designated recipient's institution, or a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for that remittance transfer; and

(D) The remittance transfer is sent from the sender's account with the insured institution; provided however, for the purposes of this paragraph, a sender's account does not include a prepaid account, unless the prepaid account is a payroll card account or a government benefit account.

(ii) The disclosure in § 1005.31(b)(1)(vii) may be estimated under paragraph (b)(5)(i) of this section only if covered third-party fees are permitted to be estimated under paragraph (b)(5)(i) of this section and the estimated covered third-party fees affect the amount of such disclosure.

* * * * *

§ 1005.33 [Amended]

■ 4. Amend § 1005.33(a)(1)(iii)(A) by removing ''(a), (b)(1) or (b)(2)'' and adding in its place ''(a) or (b)(1), (2), (4), or (5)''.

§ 1005.36 [Amended]

■ 5. Amend § 1005.36(b)(3) by removing ''(a) or (b)(1)'' and adding in its place ''(a) or (b)(1), (4), or (5)''.

■ 6. In supplement I to part 1005:
■ a. Under *Section 1005.30—Remittance Transfer Definitions,* revise *30(f) Remittance Transfer Provider.*
■ b. Under *Section 1005.31—Disclosures,* revise *31(b)(1)(viii) Statement When Additional Fees and Taxes May Apply.*
■ c. Under *Section 1005.32—Estimates:*
■ 1. Revise introductory paragraph 1 and *32(b)(1) Permanent Exceptions for Transfers to Certain Countries;*
■ 2. Add *32(b)(4) Permanent Exception for Estimation of the Exchange Rate by an Insured Institution,* and *32(b)(5) Permanent Exception for Estimation of Covered Third-Party Fees by an Insured Institution;* and
■ 3. Revise *32(c)(3) Covered Third-Party Fees,* and *32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer.*
■ d. Under *Section 1005.36—Transfers Scheduled Before the Date of Transfer,* revise *36(b) Accuracy.*

The revisions and additions read as follows:

Supplement I to Part 1005—Official Interpretations

Section 1005.30—Remittance Transfer Definitions

* * * * *

30(f) Remittance Transfer Provider

1. *Agents.* A person is not deemed to be acting as a remittance transfer provider when it performs activities as an agent on behalf of a remittance transfer provider.

2. *Normal course of business.* i. *General.* Whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. For example, if a financial institution generally does not make remittance transfers available to customers, but sends a couple of such transfers in a given year as an accommodation for a customer, the institution does not provide remittance transfers in the normal course of business. In contrast, if a financial institution makes remittance transfers generally available to customers (whether described in the institution's deposit account agreement, or in practice) and makes transfers more frequently than on an occasional basis, the institution provides remittance transfers in the normal course of business.

ii. *Safe harbor.* On July 21, 2020, the safe harbor threshold in § 1005.30(f)(2)(i) changed from 100 remittance transfers to 500 remittance transfers. Under § 1005.30(f)(2)(i), beginning on July 21, 2020, a person that provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year is deemed not to be providing remittance transfers in the normal course of its business. Accordingly, a person that qualifies for the safe harbor in § 1005.30(f)(2)(i) is not a ''remittance transfer provider'' and is not subject to the requirements of subpart B. For purposes of determining whether a person qualifies for the safe harbor under § 1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of ''remittance transfer'' due simply to the safe harbor. In contrast, the number of remittance transfers provided does not include any transfers that are excluded from the definition of ''remittance transfer'' for reasons other than the safe harbor, such as small value transactions or securities and commodities transfers that are excluded from the definition of ''remittance transfer'' by § 1005.30(e)(2).

iii. *Transition period.* A person may cease to satisfy the requirements of the safe harbor described in § 1005.30(f)(2)(i) if, beginning on July 21, 2020, the person provides in excess of 500 remittance transfers in a calendar year. For example, if a person that provided 500 or fewer remittance transfers in the previous calendar year provides more than 500 remittance transfers in the current calendar year, the safe harbor applies to the first 500 remittance transfers that the person provides in the current calendar year. For any additional remittance transfers provided in the current calendar year and for any remittance transfers provided in the subsequent calendar year, whether the person provides remittance transfers for a consumer in the normal course of its business, as defined in § 1005.30(f)(1), and is thus a remittance transfer provider for those additional transfers, depends on the facts and circumstances. Section 1005.30(f)(2)(ii) provides a reasonable period of time, not to exceed six months, for such a person to begin complying with subpart B, if that person is then providing remittance transfers in the normal course of its business. At the end of that reasonable period of time, such person would be required to comply with subpart B unless, based on the facts and circumstances, the person is not a remittance transfer provider.

iv. *Examples.* A. *Example of safe harbor and transition period for 100-transfer safe harbor threshold effective prior to July 21, 2020.* Assume that a person provided 90 remittance transfers in 2012 and 90 such transfers in 2013. The safe harbor applied to the person's transfers in 2013, as well as the person's first 100 remittance transfers in 2014. However, if the person provided a 101st transfer on September 5, 2014, the facts and circumstances determine whether the person provided remittance transfers in the normal course of business and was thus a remittance transfer provider for the 101st and any subsequent remittance transfers that it provided in 2014. Furthermore, the person would not have qualified for the safe harbor described in § 1005.30(f)(2)(i) in 2015 because the person did not provide 100 or fewer remittance transfers in 2014. However, for the 101st remittance transfer provided in 2014, as well as additional remittance transfers provided thereafter in 2014 and 2015, if that person was then providing remittance transfers for a consumer in the normal course of business, the person had a reasonable period of time, not to exceed six months, to come into compliance with subpart B. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B was not required for remittance transfers made on or before March 5, 2015 (*i.e.,* six months after September 5, 2014). After March 5, 2015, the person was required to comply with subpart B if, based on the facts and circumstances, the person provided remittance transfers in the normal course of business and was thus a remittance transfer provider.

B. *Example of safe harbor for a person that provided 500 or fewer transfers in 2019 and provides 500 or fewer transfers in 2020.* On July 21, 2020, the safe harbor threshold in § 1005.30(f)(2)(i) changed from 100 remittance transfers to 500 remittance transfers. Thus, beginning on July 21, 2020, pursuant to § 1005.30(f)(2)(i), a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person provided 500 or fewer remittance transfers in the previous calendar year and provides 500 or fewer remittance transfers in the current calendar year. If a person provided 500 or fewer transfers in 2019 and provides 500 or fewer remittance transfers in 2020, that person qualifies for the safe harbor threshold in 2020. For example, assume that a person provided 200 remittance transfers in 2019 and 400 remittance transfers in 2020. The safe harbor will apply to the person's transfers in 2020 beginning on July 21, 2020, as well as the person's first 500 transfers in 2021. *See* comment 30(f)-2.iv.C for an example regarding the transition period if the 500-transfer safe harbor is exceeded.

C. *Example of safe harbor and transition period for the 500-transfer safe harbor threshold beginning on July 21, 2020.* Assume that a person provided 490 remittance transfers in 2020 and 490 such transfers in 2021. The safe harbor will apply to the person's transfers in 2021, as well as the person's first 500 remittance transfers in 2022. However, if the person provides a 501st transfer on September 5, 2022, the facts and circumstances determine whether the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider for the 501st and any subsequent remittance transfers that it provides in 2022. Furthermore, the person would not qualify for the safe harbor described in § 1005.30(f)(2)(i) in 2023 because the person did not provide 500 or fewer remittance transfers in 2022. However, for the 501st remittance transfer provided in 2022, as well as additional remittance transfers provided thereafter in 2022 and 2023, if that person is then providing remittance transfers for a consumer in the normal course of business, the person will have a reasonable period of time, not to exceed six months, to come into compliance with subpart B of Regulation E. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B is not required for remittance transfers made on or before March 5, 2023 (*i.e.,* six months after September 5, 2022). After March 5, 2023, the person is required to comply with subpart B if, based on the facts and circumstances, the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider.

v. *Continued compliance for transfers for which payment was made before a person qualifies for the safe harbor.* Section 1005.30(f)(2)(iii) addresses situations where a person who previously was required to comply with subpart B of Regulation E newly qualifies for the safe harbor in § 1005.30(f)(2)(i). That section states that the requirements of EFTA and Regulation E, including those set forth in §§ 1005.33 and 1005.34 (which address procedures for resolving errors and procedures for cancellation and refund of remittance transfers, respectively), as well as the requirements set forth in § 1005.13 (which, in part, governs record retention), continue to apply to transfers for which payment is made prior to the date the person qualifies for the safe harbor in § 1005.30(f)(2)(i). Qualifying for the safe harbor in § 1005.30(f)(2)(i) likewise does not excuse compliance with any other applicable law or regulation. For example, if a remittance transfer is also an electronic fund transfer, any requirements in subpart A of Regulation E that apply to the transfer continue to apply, regardless of whether the person must comply with subpart B. Relevant requirements in subpart A may include, but are not limited to, those relating to initial disclosures, change-in-terms notices, liability of consumers for unauthorized transfers, and procedures for resolving errors.

3. *Multiple remittance transfer providers.* If the remittance transfer involves more than one remittance transfer provider, only one set of disclosures must be given, and the remittance transfer providers must agree among themselves which provider must take the actions necessary to comply with the requirements that subpart B imposes on any or all of them. Even though the providers must designate one provider to take the actions necessary to comply with the requirements that subpart B imposes on any or all of them, all remittance transfer providers involved in the remittance transfer remain responsible for compliance with the applicable provisions of the EFTA and Regulation E.

Section 1005.31—Disclosures

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31(b) Disclosure Requirements

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31(b)(1)(viii) Statement When Additional Fees and Taxes May Apply *Required disclaimer when non-covered third-party fees and taxes collected by a person other than the provider may apply.* If non-covered third-party fees or taxes collected by a person other than the provider apply to a particular remittance transfer or if a provider does not know if such fees or taxes may apply to a particular remittance transfer, § 1005.31(b)(1)(viii) requires the provider to include the disclaimer with respect to such fees and taxes. Required disclosures under § 1005.31(b)(1)(viii) may only be provided to the extent applicable. For example, if the designated recipient's institution is an agent of the provider and thus, non-covered third-party fees cannot apply to the transfer, the provider must disclose all fees imposed on the remittance transfer and may not provide the disclaimer regarding non-covered third-party fees. In this scenario, the provider may only provide the disclaimer regarding taxes collected on the remittance transfer by a person other than the provider, as applicable. *See* Model Form A–30(c).

2. *Optional disclosure of non-covered third-party fees and taxes collected by a person other than the provider.* When a remittance transfer provider knows the non-covered third-party fees or taxes collected on the remittance transfer by a person other than the provider that will apply to a particular transaction, § 1005.31(b)(1)(viii) permits the provider to disclose the amount of such fees and taxes. Section 1005.32(b)(3) additionally permits a provider to disclose an estimate of such fees and taxes, provided any estimates are based on reasonable source of information. *See* comment 32(b)(3)–1. For example, a provider may know that the designated recipient's institution imposes an incoming wire fee for receiving a transfer. Alternatively, a provider may know that foreign taxes will be collected on the remittance transfer by a person other than the remittance transfer provider. In these examples, the provider may choose, at its option, to disclose the amounts of the relevant recipient institution fee and tax as part of the information disclosed pursuant to § 1005.31(b)(1)(viii). The provider must not include that fee or tax in the amount disclosed pursuant to § 1005.31(b)(1)(vi) or (b)(1)(vii). Fees and taxes disclosed under § 1005.31(b)(1)(viii) must be disclosed in the currency in which the funds will be received. *See* comment 31(b)(1)(vi)–1. Estimates of any non-covered third-party fees and any taxes collected on the remittance transfer by a person other than the provider must be disclosed in accordance with § 1005.32(b)(3).

* * * * *

Section 1005.32—Estimates

1. *Disclosures where estimates can be used.* Sections 1005.32(a) and (b)(1), (b)(4), and (b)(5) permit estimates to be used in certain circumstances for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2). To the extent permitted in § 1005.32(a) and (b)(1), (b)(4), and (b)(5), estimates may be used in the pre-payment disclosure described in § 1005.31(b)(1), the receipt disclosure described in § 1005.31(b)(2), the combined disclosure described in § 1005.31(b)(3), and the pre-payment disclosures and receipt disclosures for both first and subsequent preauthorized remittance transfers described in § 1005.36(a)(1) and (2). Section 1005.32(b)(2) permits estimates to be used for certain information if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer, for disclosures described in § 1005.36(a)(1)(i) and (a)(2)(i).

* * * * *

32(b) Permanent Exceptions

32(b)(1) Permanent Exceptions for Transfers to Certain Countries

1. *Laws of the recipient country.* The laws of the recipient country do not permit a remittance transfer provider to determine exact amounts required to be disclosed when a law or regulation of the recipient country requires the person making funds directly available to the designated recipient to apply an exchange rate that is:

i. Set by the government of the recipient country after the remittance transfer provider sends the remittance transfer or

ii. Set when the designated recipient receives the funds.

2. *Example illustrating when exact amounts can and cannot be determined because of the laws of the recipient country.*

i. The laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country, on a daily basis, sets the exchange rate that must, by law, apply to funds received and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country ties the value of its currency to the U.S. dollar.

3. *Method by which transactions are made in the recipient country.* The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine exact amounts required to be disclosed when transactions are sent via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank or other governmental authority after the provider sends the remittance transfer.

4. *Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.*

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the § 1005.32(a) temporary exception or the exception set forth in § 1005.32(b)(4).

iii. A remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B)

methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank or other governmental authority before the sender requests a transfer.

5. *Safe harbor list.* If a country is included on a safe harbor list published by the Bureau under § 1005.32(b)(1)(ii), a remittance transfer provider may provide estimates of the amounts to be disclosed under § 1005.31(b)(1)(iv) through (vii). If a country does not appear on the Bureau's list, a remittance transfer provider may provide estimates under § 1005.32(b)(1)(i) if the provider determines that the recipient country does not legally permit or the method by which transactions are conducted in that country does not permit the provider to determine exact disclosure amounts.

6. *Reliance on Bureau list of countries.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether the laws of a recipient country do not permit the remittance transfer provider to determine exact amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii). Thus, if a country is on the Bureau's list, the provider may give estimates under this section, unless a remittance transfer provider has information that a country on the Bureau's list legally permits the provider to determine exact disclosure amounts.

7. *Change in laws of recipient country.*

i. If the laws of a recipient country change such that a remittance transfer provider can determine exact amounts, the remittance transfer provider must begin providing exact amounts for the required disclosures as soon as reasonably practicable if the provider has information that the country legally permits the provider to determine exact disclosure amounts.

ii. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under § 1005.32(b)(1)(i), even if that country does not appear on the list published by the Bureau.

* * * * *

32(b)(4) Permanent Exception for Estimation of the Exchange Rate by an Insured Institution

1. *Determining the exact exchange rate.* For purposes of § 1005.32(b)(4)(i)(B), an insured institution cannot determine, at the time it must provide the applicable disclosures, the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for a remittance transfer to a particular country where the designated recipient of the transfer will receive funds in the country's local currency if a person other than the insured institution sets the exchange rate for that transfer, except where that person has a correspondent relationship with the insured institution, that person is a service provider for the insured institution, or that person acts as an agent of the insured institution.

i. *Example where an insured institution cannot determine the exact exchange rate.* The following example illustrates when an insured institution cannot determine an exact exchange rate under § 1005.32(b)(4)(i)(B) for a remittance transfer:

A. An insured institution or its service provider does not set the exchange rate required to be disclosed under § 1005.31(b)(1)(iv), and the rate is set when the funds are deposited into the recipient's account by the designated recipient's institution that does not have a correspondent relationship with, and does not act as an agent of, the insured institution.

ii. *Examples where an insured institution can determine the exact exchange rate.* The following examples illustrate when an insured institution can determine an exact exchange rate under § 1005.32(b)(4)(i)(B) for a remittance transfer, and thus the insured institution may not use the exception in § 1005.32(b)(4) to estimate the disclosures required under § 1005.31(b)(1)(iv) through (vii) for the remittance transfer:

A. An insured institution has a correspondent relationship with an intermediary financial institution (or the intermediary financial institution acts as an agent of the insured institution) and that intermediary financial institution sets the exchange rate required to be disclosed under § 1005.31(b)(1)(iv) for a remittance transfer.

B. An insured institution or its service provider converts the funds into the local currency to be received by the designated recipient for a remittance transfer using an exchange rate that the insured institution or its service provider sets. The insured institution can determine the exact exchange rate for purposes of § 1005.32(b)(4)(i)(B) for the remittance transfer even if the insured institution does not have a correspondent relationship with an intermediary financial institution in the transmittal route or the designated recipient's institution, and an intermediary financial institution in the transmittal route or the designed recipient's institution does not act as an agent of the insured institution.

2. *Threshold.* For purposes of determining whether an insured institution made 1,000 or fewer remittance transfers in the prior calendar year to a particular country pursuant to § 1005.32(b)(4)(i)(C):

i. The number of remittance transfers provided includes transfers in the prior calendar year to that country when the designated recipients of those transfers received funds in the country's local currency regardless of whether the exchange rate was estimated for those transfers. For example, an insured institution exceeds the 1,000-transfer threshold in the prior calendar year if the insured institution provided 700 remittance transfers to a country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency when the exchange rate was estimated for those transfers and also sends 400 remittance transfers to the same country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and the exchange rate for those transfers was not estimated.

ii. The number of remittance transfers does not include remittance transfers to a country in the prior calendar year when the designated recipients of those transfers did not receive the funds in the country's local currency. For example, an insured institution does not exceed the 1,000-transfer threshold in the prior calendar year if the insured institution provides 700 remittance transfers to a country in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and also sends 400 remittance transfers to the same country in the prior calendar year when the designated recipients of those transfers did not receive funds in the country's local currency.

3. *Transition period.* If an insured institution in the prior calendar year did not exceed the 1,000-transfer threshold to a particular country pursuant to § 1005.32(b)(4)(i)(C), but does exceed the 1,000-transfer threshold in the current calendar year, the insured institution has a reasonable amount of time after exceeding the 1,000-transfer threshold to begin providing exact exchange rates in disclosures (assuming it cannot rely on another exception in § 1005.32 to estimate the exchange rate). The reasonable amount of time must not exceed the later of six months after exceeding the 1,000-transfer threshold in the current calendar year or January 1 of the next year. For example, assume an insured institution did not exceed the 1,000-transfer threshold to a particular country pursuant to § 1005.32(b)(4)(i)(C) in 2020, but does exceed the 1,000-transfer threshold on December 1, 2021. The insured institution would have a reasonable amount of time after December 1, 2021 to begin providing exact exchange rates in disclosures (assuming it cannot rely on another exception in § 1005.32 to estimate the exchange rate). In this case, the reasonable amount of time must not exceed June 1, 2022 (which is six months after the insured institution exceeds the 1,000-transfer threshold in the previous year).

32(b)(5) Permanent Exception for Estimation of Covered Third-Party Fees by an Insured Institution

1. *Insured institution cannot determine the exact covered third-party fees.* For purposes of § 1005.32(b)(5)(i)(B), an insured institution cannot determine, at the time it must provide the applicable disclosures, the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for a remittance transfer to a designated recipient's institution when all of the following conditions are met:

i. The insured institution does not have a correspondent relationship with the designated recipient's institution;

ii. The designated recipient's institution does not act as an agent of the insured institution;

iii. The insured institution does not have an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer (*e.g.,* an agreement whereby the designated recipient's institution agrees to charge back any covered third-party fees to the insured institution rather than impose the fees on the remittance transfer); and

iv. The insured institution does not know at the time the disclosures are given that the

only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution.

2. *Insured institution can determine the exact covered third-party fees.* For purposes of § 1005.32(b)(5)(i)(B), an insured institution can determine, at the time it must provide the applicable disclosures, exact covered third-party fees, and thus the insured institution may not use the exception in § 1005.32(b)(5) to estimate the disclosures required under § 1005.31(b)(1)(vi) or (vii) for the transfer, if any of the following conditions are met:

i. An insured institution has a correspondent relationship with the designated recipient's institution;

ii. The designated recipient's institution acts as an agent of the insured institution;

iii. An insured institution has an agreement with the designated recipient's institution with respect to the imposition of covered third-party fees on the remittance transfer; or

iv. An insured institution knows at the time the disclosures are given that the only intermediary financial institutions that will impose covered third-party fees on the transfer are those institutions that have a correspondent relationship with or act as an agent for the insured institution, or have otherwise agreed upon the covered third-party fees with the insured institution.

3. *Threshold.* For purposes of determining whether an insured institution made 500 or fewer remittance transfers in the prior calendar year to a particular designated recipient's institution pursuant to § 1005.32(b)(5)(i)(C):

i. The number of remittance transfers provided includes remittance transfers in the prior calendar year to that designated recipient's institution regardless of whether the covered third-party fees were estimated for those transfers. For example, an insured institution exceeds the 500-transfer threshold in the prior calendar year if an insured institution provides 300 remittance transfers to the designated recipient's institution in the prior calendar year when the covered third-party fees were estimated for those transfers and also sends 400 remittance transfers to the designated recipient's institution in the prior calendar year and the covered third-party fees for those transfers were not estimated.

ii. The number of remittance transfers includes remittance transfers provided to the designated recipient's institution in the prior calendar year regardless of whether the designated recipients received the funds in the country's local currency or in another currency. For example, an insured institution exceeds the 500-transfer threshold in the prior calendar year if the insured institution provides 300 remittance transfers to the designated recipient's institution in the prior calendar year when the designated recipients of those transfers received funds in the country's local currency and also sends 400 remittance transfers to the same designated recipient's institution in the prior calendar year when the designated recipients of those transfers did not receive funds in the country's local currency.

iii. The number of remittance transfers includes remittance transfers provided to the designated recipient's institution and any of its branches in the country to which the particular transfer described in § 1005.32(b)(5) is being sent. For example, if the particular remittance transfer described in § 1005.32(b)(5) is being sent to the designated recipient's institution Bank XYZ in Nigeria, the number of remittance transfers for purposes of the 500-transfer threshold would include remittances transfers in the previous calendar year that were sent to Bank XYZ, or to its branches, in Nigeria. The 500-transfer threshold would not include remittance transfers that were sent to branches of Bank XYZ that were located in any country other than Nigeria.

4. *United States Federal statute or regulation.* An insured institution can still use § 1005.32(b)(5) to provide estimates of covered third-party fees for a remittance transfer sent to a particular designated recipient's institution even if the insured institution sent more than 500 transfers to the designated recipient's institution in the prior calendar year if a United States Federal statute or regulation prohibits the insured institution from being able to determine the exact covered third-party fees required to be disclosed under § 1005.31(b)(1)(vi) for the remittance transfer and the insured institution meets the other conditions set forth in § 1005.32(b)(5). A United States Federal statute or regulation specifically prohibits the insured institution from being able to determine the exact covered third-party fees for the remittance transfer if the United States Federal statute or regulation:

i. Prohibits the insured institution from disclosing exact covered third-party fees in disclosures for transfers to a designated recipient's institution; or

ii. Makes it infeasible for the insured institution to form a relationship with the designated recipient's institution and that relationship is necessary for the insured institution to be able to determine, at the time it must provide the applicable disclosures, exact covered third-party fees.

5. *Transition period.* If an insured institution in the prior calendar year did not exceed the 500-transfer threshold to a particular designated recipient's institution pursuant to § 1005.32(b)(5)(i)(C), but does exceed the 500-transfer threshold in the current calendar year, the insured institution has a reasonable amount of time after exceeding the 500-transfer threshold to begin providing exact covered third-party fees in disclosures (assuming that a United States Federal statute or regulation does not prohibit the insured institution from being able to determine the exact covered third-party fees, or the insured institution cannot rely on another exception in § 1005.32 to estimate covered third-party fees). The reasonable amount of time must not exceed the later of six months after exceeding the 500-transfer threshold in the current calendar year or January 1 of the next year. For example, assume an insured institution did not exceed the 500-transfer threshold to a particular designated recipient's institution pursuant to § 1005.32(b)(5)(i)(C) in 2020, but does exceed the 500-transfer threshold on December 1, 2021. The insured institution would have a reasonable amount of time after December 1, 2021 to begin providing exact covered third-party fees in disclosures (assuming that a United States Federal statute or regulation does not prohibit the insured institution from being able to determine the exact covered third-party fees, or the insured institution cannot rely on another exception in § 1005.32 to estimate covered third-party fees). In this case, the reasonable amount of time must not exceed June 1, 2022 (which is six months after the insured institution exceeds the 500-transfer threshold in the previous year).

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32(c) Bases for Estimates

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32(c)(3) Covered Third-Party Fees

1. *Potential transmittal routes.* A remittance transfer from the sender's account at an insured institution to the designated recipient's institution may take several routes, depending on the correspondent relationships each institution in the transmittal route has with other institutions. In providing an estimate of the fees required to be disclosed under § 1005.31(b)(1)(vi) pursuant to the § 1005.32(a) temporary exception or the exception under § 1005.32(b)(5), an insured institution may rely upon the representations of the designated recipient's institution and the institutions that act as intermediaries in any one of the potential transmittal routes that it reasonably believes a requested remittance transfer may travel.

32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer

1. *In general.* When providing an estimate pursuant to § 1005.32(b)(2), § 1005.32(d) requires that a remittance transfer provider's estimated exchange rate must be the exchange rate (or estimated exchange rate) that the remittance transfer provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, for the same-day remittance transfer, the provider could utilize an exception permitting the provision of estimates in § 1005.32(a) or (b)(1), or (4), the provider may provide estimates based on a methodology permitted under § 1005.32(c). For example, if, on February 1, the sender schedules a remittance transfer to occur on February 10, the provider should disclose the exchange rate as if the sender was requesting the transfer be sent on February 1. However, if at the time payment is made for the requested transfer, the remittance transfer provider could not send any remittance transfer until the next day (for reasons such as the provider's deadline for the batching of transfers), the remittance transfer provider can use the rate (or estimated exchange rate) that the remittance transfer provider would have used or did use in providing disclosures that day with respect to a remittance transfer requested that day that could not be sent until the following day.

* * * * *

Section 1005.36—Transfers Scheduled Before the Date of Transfer

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36(b) Accuracy

1. *Use of estimates.* In providing the disclosures described in § 1005.36(a)(1)(i) or (a)(2)(i), remittance transfer providers may use estimates to the extent permitted by any of the exceptions in § 1005.32. When estimates are permitted, however, they must be disclosed in accordance with § 1005.31(d).

2. *Subsequent preauthorized remittance transfers.* For a subsequent transfer in a series of preauthorized remittance transfers, the receipt provided pursuant to § 1005.36(a)(1)(i), except for the temporal disclosures in that receipt required by § 1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date), applies to each subsequent preauthorized remittance transfer unless and until it is superseded by a receipt provided pursuant to § 1005.36(a)(2)(i). For each subsequent preauthorized remittance transfer, only the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of the date each subsequent transfer is made.

3. *Receipts.* A receipt required by § 1005.36(a)(1)(ii) or (a)(2)(ii) must accurately reflect the details of the transfer to which it pertains and may not contain estimates pursuant to § 1005.32(b)(2). However, the remittance transfer provider may continue to disclose estimates to the extent permitted by § 1005.32(a) or (b)(1), (4), or (5). In providing receipts pursuant to § 1005.36(a)(1)(ii) or (a)(2)(ii), § 1005.36(b)(2) and (3) do not allow a remittance transfer provider to change figures previously disclosed on a receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), unless a figure was an estimate or based on an estimate disclosed pursuant to § 1005.32. Thus, for example, if a provider disclosed its fee as $10 in a receipt provided pursuant to § 1005.36(a)(1)(i) and that receipt contained an estimate of the exchange rate pursuant to § 1005.32(b)(2), the second receipt provided pursuant to § 1005.36(a)(1)(ii) must also disclose the fee as $10.

* * * * *

Dated: May 6, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

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Part V

Department of the Interior

Bureau of Ocean Energy Management

30 CFR Part 550

Air Quality Control, Reporting, and Compliance; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 550

[Docket ID: BOEM–2018–0038]

RIN 1010–AE02

Air Quality Control, Reporting, and Compliance

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Final rule.

SUMMARY: On April 5, 2016, BOEM published a proposed rule that would amend the regulations related to air quality measurement, evaluation, and control for oil, gas, and sulfur operations on the Outer Continental Shelf (OCS). The rule proposed significant revisions to existing regulations. This final rule amends the air quality management regulations applicable to activities that BOEM authorizes on the OCS of the United States in the Central and Western Gulf of Mexico (GOM) west of 87.5 degrees longitude and adjacent to the North Slope Borough of the State of Alaska. The air quality regulatory program (AQRP) is a component of the review and approval of plans for the exploration, development, and production of oil, gas, and sulfur on the OCS to comport with the Secretary of the Interior's separate and distinct statutory authority governing air quality. This final rule implements the Secretary of the Interior's statutory responsibility to ensure that conventional energy activities authorized under the Outer Continental Shelf Lands Act (OCSLA) do not preclude compliance with National Ambient Air Quality Standards (NAAQS) to the extent those activities significantly affect the air quality of any State.

DATES: This rule is effective on July 6, 2020.

FOR FURTHER INFORMATION CONTACT: Peter Meffert, Bureau of Ocean Energy Management, Office of Policy, Regulation, and Analysis, at *Peter.Meffert@boem.gov* or by mail to 45600 Woodland Road, Sterling, VA 20166 or by calling (703) 787–1610. You may also contact Deanna Meyer-Pietruszka, Bureau of Ocean Energy Management, Chief, Office of Policy, Regulation, and Analysis, at *Deanna.Meyer-Pietruszka@boem.gov* or by mail to 1849 C Street NW, Mail Stop 5238, Washington, DC 20240 or by calling (202) 208–6352.

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I. Preamble Acronyms and Terms

To ease the reading of this preamble and for reference purposes, the following acronyms and terms are used in the preamble:

AKOCSR Alaska OCS Region
ANCSA Alaska Native Claims Settlement Act
AQRP Air Quality Regulatory Program
ASLM Assistant Secretary for Land and Minerals Management
ASRC Arctic Slope Regional Corporation
BACT Best Available Control Technology
BOEM Bureau of Ocean Energy Management
BSEE Bureau of Safety and Environmental Enforcement
CAA Clean Air Act
DOI Department of the Interior
DOCD Development Operations Coordination Document
DPP Development and Production Plan
EA Environmental Assessment
EET Emission Exemption Threshold
EIS Environmental Impact Statement
E.O. Executive Order
EP Exploration Plan
FR Federal Register
GOM Gulf of Mexico
GOMR Gulf of Mexico Region
IC Information Collection
IRIA Initial Regulatory Impact Analysis
MACI Maximum Allowable Concentration Increases
MMS Minerals Management Service
NAAQS National Ambient Air Quality Standards
NASEM National Academy of Sciences, Engineering, and Medicine
NGO Non-governmental Organization
NTL Notice to Lessees and Operators
OCS Outer Continental Shelf
OCSLA Outer Continental Shelf Lands Act
OIRA Office of Information and Regulatory Affairs (a sub agency within OMB)
OMB Office of Management and Budget
PM Particulate Matter
$PM_{2.5}$ Particulate Matter less than or equal to 2.5 microns diameter (*i.e.,* fine PM)
PM_{10} Particulate Matter less than or equal to 10 microns diameter
PRA Paperwork Reduction Act
ROW Right-of-Way
RUE Right-of-Use-and-Easement
SBA Small Business Administration
Secretary Secretary of the Interior
S.O. Secretary's Order
SILs Significant Impact Levels
SLs Significance Levels
TSP Total Suspended Particulates
USEPA U.S. Environmental Protection Agency
VOC Volatile Organic Compound

II. Background and Legal Authority

A. Background

The Outer Continental Shelf Lands Act (OCSLA) provides the Secretary of the Interior (Secretary), acting through the Bureau of Ocean Energy Management (BOEM), with the authority to ''prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of resources of the Outer Continental Shelf (OCS), and the protection of correlative rights therein'' and that ''notwithstanding any other provisions herein, such rules and regulations shall, as of their effective date, apply to all operations conducted under a lease issued or maintained under the provisions of this subchapter.'' 43 U.S.C. 1334(a). OCSLA is clear on the Secretary's responsibilities to ensure ''compliance with the National Ambient Air Quality Standards [(NAAQS)]'', however the plain language also states that his

authority to regulate is limited to ''activities authorized under this [Act]'' that ''significantly affect the air quality of any State.'' For instance, OCSLA itself does not require or permit the operation of vessels in support of activities under a lease.

OCSLA's provisions on air quality provide the Secretary a much narrower authority to regulate when compared with the breadth of those authorities granted to the Environmental Protection Agency (USEPA) in the Clean Air Act (CAA). Under later amendment to the CAA, the CAA Amendments of 1990, section 328 of the CAA clearly outlines the separate and distinct jurisdictional authority of the USEPA, limiting the applicability of USEPA's regulatory authority only to specific areas of the OCS in consultation with the Secretary. 42 U.S.C. 7627. Congress further curtailed the geographic extent of USEPA's jurisdiction on the OCS in the Consolidated Appropriations Act of 2012 (Pub. L. 112–74), which transferred regulatory authority for air quality for operations in the Arctic OCS adjacent to the North Slope Borough of the State of Alaska from the USEPA to DOI.

Unlike the USEPA, whose regulatory mandate is much broader and applicable to many types of air pollutants, DOI's regulatory authority under section 5(a) of OCSLA is focused on the six criteria air pollutants for which the USEPA has defined National Ambient Air Quality Standards (NAAQS) in accordance with the requirements of the Clean Air Act (CAA). These pollutants are Sulfur Dioxide, Nitrogen Oxide, Carbon Monoxide, Lead, Ozone, and Particulate Matter, of which there are several forms, two of which, $PM_{2.5}$, and PM_{10}, have defined NAAQS.[1] The amount of any given criteria pollutant that may affect any State is influenced by two factors, the direct emission and dispersion of the criteria pollutant and the formation of a criteria pollutant caused by the emissions of other pollutants. Those air pollutants that contribute to the formation of a criteria air pollutant are known as precursor air pollutants. Historically, the precursor air pollutant that BOEM has regulated (in addition to those precursor air pollutants that are themselves also criteria air pollutants) is Volatile Organic Compounds (VOCs).

The legislative history of section 5(a) of OCSLA provides more insight into Congressional intent. The 1978 Conference Report notes that while one version of the original legislation included ''very broad authority, with few guidelines, to promulgate regulations'' it was ultimately the final, adopted language known to us in the statute that ''does provide statutory guidelines and requirements for certain types of regulations'' in order to provide ''a mechanism for coordinated bureaucratic action.'' S. Rep. 95–1091 at 82–83 (1978).

Furthermore, this same report notes that conferees intended that regulations promulgated by the Secretary would, ''. . . not generally require that the air mass above the OCS itself be brought into compliance . . .'' but instead would control emissions from seaward sources ''. . . to prevent a significant effect on the air quality of an adjacent onshore area.'' *Id.* at 85–86. It is apparent from this Conference Report that Congress contemplated greater authorities, but instead chose statutory direction that sought to both de-conflict and define a separate and distinct regulatory regimen for the Secretary, expecting that some authorized activities on the OCS may not have significant effects due to their being located ''many miles'' from an adjacent onshore area. *Id.* at 86. Subsequent to the passage of this statutory direction provided by the OCSLA Amendments of 1978, the Department of the Interior (DOI) promulgated air quality regulations for the OCS in 1980, which incorporated the NAAQS, as established at that time.

On April 5, 2016, BOEM published a proposed rule (81 FR 19718, April 5, 2016) to update the current air quality regulations that were promulgated by the Secretary of the Interior (Secretary) over 39 years ago (45 FR 15128, March 7, 1980). While the existing regulatory process is adequate, the regulations copied USEPA's significance levels (SLs) and Maximum Allowable Concentration Increases (MACIs) at the time of promulgation (1980). The corresponding values in the USEPA regulations have been updated since DOI's regulations were adopted.

On May 23, 2016, BOEM provided a 14-day comment period extension to the original 60-day public comment period, thus extending the public comment period to June 20, 2016 (81 FR 32259). On March 28, 2017, President Trump issued Executive Order (E.O.) 13783, ''Promoting Energy Independence and Economic Growth.'' In section 2 of that Executive order, the President directed that: ''The heads of agencies shall review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources . . .'' and directed the head of each agency to finalize a report detailing the aforementioned agency actions that potentially burden domestic energy development. On October 24, 2017, the DOI finalized and published in the **Federal Register** the ''Review of the Department of the Interior Actions that Potentially Burden Domestic Energy.'' 82 FR 5052, Nov. 1, 2017. This report identified BOEM's review of the proposed air quality rule.

Separately, on April 28, 2017, President Trump issued E.O. 13795, ''Implementing an America-First Offshore Energy Strategy.'' In section 8 of that Executive order, the President directed that: ''The Secretary of the Interior shall take all steps necessary to review BOEM's Proposed Rule entitled 'Air Quality Control, Reporting, and Compliance,' 81 FR 19718 (April 5, 2016), along with any related rules and guidance, and, if appropriate, shall, as soon as practicable and consistent with law, consider whether the proposed rule, and any related rules and guidance, should be revised or withdrawn.'' Notably, both Executive orders only directed the review of agency actions and did not direct specific outcomes for rulemakings, leaving decisions to the discretion of the Secretary, consistent with applicable laws.

BOEM has carefully reviewed the available alternatives to ensure compliance with all relevant subsequent Executive and Secretary's orders, including those related to energy independence and regulatory reform. Moreover, BOEM reviewed all comments received during the public comment period for the proposed rule, in accordance with the Administrative Procedure Act (APA). Reexamination of the public comments from the 2016 proposed rule was necessary since it is questionable whether all provisions of the 2016 proposed rule would survive judicial review.

This final rule revises the regulations so that they adequately reflect current SLs while ensuring that the regulatory administration of the Secretary's distinct statutory authorities does not go beyond the authorities granted to the Secretary in OCSLA.

[1] The existing BOEM regulations refer to total suspended particulates (TSP), which was a criteria air pollutant at the time the regulations were originally published. Total suspended particulates means any form of particulate matter (*i.e.,* solid particles or droplets) suspended in the air that has a diameter of 100 microns or less. PM_{10} and $PM_{2.5}$ are subsets of TSP because they represent forms of particulate matter having a diameter of 10 or 2.5 microns or less, respectively.

B. Key Provisions of the Final Rule

BOEM is adopting the following key provisions from the proposed rule in this final rule:

• *Compliance with the NAAQS.* The values for primary and secondary NAAQS are currently set forth in USEPA regulations at 40 CFR part 50.[2] Consistent with the proposed rule, this final rule defines the term ''NAAQS,'' deletes the outdated lists of specific criteria air pollutants, and retains the existing regulation that requires compliance with the NAAQS. Currently, § 550.303(g)(2)(i)(B) provides that no concentration of an air pollutant shall exceed the concentration permitted under the national secondary ambient air quality standard or the concentration permitted under the national primary air quality standard, whichever concentration is lowest for the air pollutant for the period of exposure. BOEM and its predecessor agencies[3] have required compliance with both primary and secondary standards because OCSLA's mandate makes no distinction between them. This final rule also clarifies that DOI's reporting and compliance requirements apply to the emissions of all pollutants on the OCS for which a national ambient air quality standard has been defined.[4]

• *Updating the Significance Levels (SLs) Table.* The term ''Significance Level'' is defined to reference the values in the table at § 550.303(e), which are based on the values currently set forth in USEPA regulations at 40 CFR 51.165(b)(2). These updated values and their updated criteria air pollutants replace the outdated table of SLs in the existing §§ 550.303(e) and 550.304(c), dating from 1980. BOEM may update these SLs as warranted through future rulemaking. In contrast to the proposed rule's approach of merely cross-referencing to the USEPA's regulations, the final rule provides a table of SLs for lessees and operators as a quick reference. Instead of searching for relevant SLs in another agency's regulations, and given that USEPA's regulations are different from DOI's, the numbers are appropriately placed and readily accessible here.

• *Clarifying the Emission Exemption Threshold (EET) Terminology.* The existing regulations use several different terms interchangeably, as they relate to the ''Emissions Exemption Amount.'' These include ''exemption amount'' and ''exempt emissions.'' BOEM is adding a definition of the term ''emissions exemption threshold,'' which replaces the term ''exemption amount'' used in the existing regulations. The existing references to the term ''exempt emissions'' are also being clarified by reference to the new defined term. These changes merely clarify terminology.

• *Replacing the Term Total Suspended Particulates (TSP).* This final rule replaces the former criteria air pollutant ''total suspended particulates''[5] with the new criteria pollutants ''particulate matter 10'' (PM_{10}) and ''particulate matter 2.5'' ($PM_{2.5}$) in the list of air pollutants in the tables at §§ 550.303(e) and 550.304(c). BOEM is aware that the USEPA has determined that PM_{10} and $PM_{2.5}$ are more relevant indicators of particle pollution impact on human health and public welfare than TSP. Nevertheless, for the time being, TSP has been retained in the EET formulas at §§ 550.303(d) and 550.304(b). Although the USEPA replaced TSP as a NAAQS pollutant in 1987 and has discontinued the use of TSP in most of its air quality regulations, BOEM does not believe that the bureau has an adequate scientific basis for replacing the EET formula for TSP at this time. Hence, BOEM is continuing the use of TSP in the EET formulas. BOEM's recent GOM and Alaska air quality studies provide insights into the EET formulas, informing potential future regulatory changes. At the same time, BOEM believes that it is important for operators to evaluate the impacts of criteria air pollutants PM_{10} and $PM_{2.5}$. For this reason, this rulemaking replaces the TSP significance level values with those of PM_{10} and $PM_{2.5}$ in the table of Significance Levels—Air Pollution Concentrations at §§ 550.303(e) and 550.304(c). Going forward, the SLs table will no longer contain any values for TSP. Because the SLs for PM_{10} and $PM_{2.5}$ are a more appropriate basis for evaluating PM pollution, this final rule will require operators, whose emissions exceed the EET for TSP,[6] to use modeling to determine whether their facility would cause an exceedance of the SLs for PM_{10} and $PM_{2.5}$, not TSP.[7]

• *Application to Development Operations Coordination Document (DOCDs).* This final rule clarifies that the EET formulas in current §§ 550.303 and 550.304 apply to Development and Production Plans (DPPs) and DOCDs. This clarification will not lead to a change in practice because BOEM has always applied the existing air quality regulations to DPPs and DOCDs. The proposed rule included this clarification. Conforming changes are made in other provisions of the final rule as described in the Section-by-Section analysis.

• *Criteria Air Pollutants.* The final rule replaces the term ''air pollutant'' with the term ''criteria air pollutant.'' Criteria air pollutants include Sulfur Dioxide, Nitrogen Oxide, Carbon Monoxide, Lead, Ozone, Particulate Matter, for which two forms, $PM_{2.5}$, and PM_{10}, have been defined. Under OCSLA, the Secretary's authority is to ensure compliance with the NAAQS to the extent that authorized activities significantly affect the air quality of any State. As noted above, USEPA has defined NAAQS for six common air pollutants, known as ''criteria air pollutants.'' In addition to the criteria air pollutants, DOI regulates VOCs, which can affect the formation of criteria pollutants. Many other ''air pollutants'' are not within the scope of OCSLA's statutory mandate, as they are not covered under the NAAQS.[8] As discussed in the proposed rule, BOEM has clarified throughout the final rule what was meant by the use of the term ''air pollutant'' in the existing regulations. Before this change, BOEM used the term ''air pollutant'' with differing meanings.[9]

• *Dispersion Modeling.* As noted previously, this final rule does not incorporate any of the provisions from

[2] Primary NAAQS standards provide for public health protection, including that of sensitive populations such as asthmatics, children, and the elderly. Secondary NAAQS standards provide for public welfare protection, including protection against decreased visibility and damage to animals, crops, vegetation, and buildings.

[3] BOEM's predecessor agencies are the U.S. Geological Survey, Bureau of Land Management, Minerals Management Service (MMS), and Bureau of Ocean Energy Management, Regulation, and Enforcement.

[4] See 43 U.S.C. 1334(a)(8), which requires ''compliance with the national ambient air quality standards.

[5] TSP represents PM having a diameter of 100 microns or less; in contrast, PM_{10} represents PM have a diameter of 10 microns or less. $PM_{2.5}$ represents PM having a diameter of two and one-half microns or less. Thus, $PM_{2.5}$ is a subset of PM_{10} and PM_{10} is a subset of TSP.

[6] Because TSP is no longer a criteria pollutant, the USEPA has deleted SLs for TSP from its SLs table; similarly, this rule's new SLs table no longer contains an SL value for TSP.

[7] Although the final rule requires operators, whose emissions exceed the EET for TSP, to use modeling to determine whether their facility would cause an exceedance of the SLs for PM_{10} and $PM_{2.5}$, not TSP, where modeling indicates an exceedance of the SL for either PM_{10} or $PM_{2.5}$, TSP evaluation in relation to the values in the table listing the Maximum Allowable Concentration Increases (MACI) might be necessary.

[8] For example, hazardous air pollutants and greenhouse gases have no NAAQS and therefore fall outside the scope of BOEM's AQRP.

[9] The section by section discussion of 30 CFR 550.105 provides details on where each of these uses of ''air pollutant'' are found in the existing regulations.

the proposed rule regarding the use of photochemical models to evaluate the formation of ozone or fine PM. Because the existing regulations cross-reference the recently updated USEPA modeling guidelines, which include guidelines on photochemical modeling, this final rule clarifies that those cross-references are applicable only to the portions of USEPA's modeling guidelines that deal with dispersion modeling. BOEM will not require photochemical modeling under any circumstances at this time. Once the ongoing air quality studies are completed and evaluated, BOEM may reevaluate this position if it determines that OCS sources significantly contribute to the formation of ozone or fine PM.

• *Air Quality Spreadsheets.* Along with this rulemaking, BOEM is updating the Office of Management and Budget (OMB)-approved air quality spreadsheets BOEM–0138 and BOEM–0139, which are applicable to Exploration Plans (EPs), DOCDs, and DPPs, respectively.[10] These are forms (not part of the regulations themselves) that operators use to report the information on air emissions required in the regulations, primarily the emissions associated with their proposed plans. These spreadsheets require the operator to identify the relevant types of equipment that will be used in connection with its OCS operations. The air quality spreadsheets provide emissions factors that correspond to each of the equipment types and that BOEM uses to determine the amount of emissions generated for every relevant criteria air pollutant, TSP, or Volatile Organic Compound (VOC) under the plan. The spreadsheets enable the operator to quantify the total emissions by type of air pollutant for all equipment included in the EP, DPP, or DOCD, and then determine whether such emissions would or would not exceed the relevant EETs.

In particular, BOEM is updating the spreadsheets with emissions factors for new types of equipment that are not currently listed (particularly those relevant to operations on the Alaska OCS). BOEM is also modifying the spreadsheet data requirements consistent with the regulations as amended. A detailed description of the spreadsheet changes is included in the section of this preamble under the heading ''Paperwork Reduction Act.''

As part of this rulemaking, the air quality spreadsheets are being updated with newer, more up-to-date emissions factors to more accurately assess the emissions being emitted by equipment used by OCS lessees and operators and to evaluate the emissions for lead, $PM_{2.5}$, PM_{10}, TSP, and ammonia.

C. BOEM's Air Quality Modeling Studies

This final rule updates outdated standards and benchmarks, but defers consideration for further regulatory changes until the BOEM studies discussed below can all be completed and evaluated.

In 2013 and 2014, BOEM initiated two air quality modeling studies to evaluate the impact of OCS operations on the air quality of the neighboring States. The first of these studies was focused on air quality adjacent to the North Slope Borough of Alaska; the second addressed Gulf of Mexico (GOM) air quality.

In 2018, BOEM completed its Alaska study, the ''Arctic Air Quality Impact Assessment Modeling Study,'' conducted by the Eastern Research Group, Inc. (ERG), Ramboll Group A/S, and the University of Alaska Fairbanks.[11] This study assessed BOEM's current EETs, and proposed neither new EETs nor changes to the existing EETs. BOEM has proposed a follow-up study entitled ''Updating the Emissions Exemption Thresholds (EETs) Using Classification and Regression Tree (CART) Analysis Study'' for BOEM's Studies Development Plan.[12] This follow-on study also would evaluate the consistency in the EETs between the Alaska and GOM regions, develop separate EETs for Alaska if appropriate, and address any comments on the methods used to formulate new EETs that are received from the National Academies of Science, Engineering, and Medicine (NASEM).

The second referenced air quality modeling study is entitled, ''Air Quality Modeling in the Gulf of Mexico'' (GM–14–01), conducted by the ERG, Ramboll Group A/S, and Alpine Geophysics. The study was completed in September 2019, has undergone an independent peer review, and is posted on BOEM's website at *https://espis.boem.gov/final%20reports/BOEM_2019-057.PDF.* BOEM is currently reviewing the results of the NASEM peer review and intends to evaluate the NASEM recommendations in the near future.

D. Summary of Key Changes Since the Proposed Rule

This final rule amends regulations implementing section 5(a)(8) of OCSLA (43 U.S.C. 1334(a)(8)), which requires the Secretary to promulgate regulations ''for compliance with the national ambient air quality standards pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under [OCSLA] significantly affect the air quality of any State.'' BOEM administers these existing regulations, which have been fundamentally the same since their publication in 1980. This final rule adopts some provisions of the proposed rule.

Over the past 40 years, the existing regulations have required lessees and operators to:[13]

1. Submit information on air emissions from their OCS oil, gas, and sulfur activities projected to occur under any proposed EP, DPP, or DOCD (collectively referred to in this final rule as ''plans'').[14]

2. Determine whether projected emissions of certain air pollutants exceed the applicable EET.

3. Model the potential impacts of certain air pollutants when projected emissions exceed an applicable EET that could potentially cause significant air quality impacts to a State. As part of this review, BOEM first analyzes whether the modeled emissions would cause an increase in the ambient concentration of any criteria air pollutant in any State to exceed an SL. If no SL is exceeded, no

[10] Available at: *https://www.boem.gov/Air-Quality-Reporting/* or at *https://www.boem.gov/BOEM-OCS-Operation-Forms/.*

[11] Paula Fields Simma, Bebhinn Do, Bart Brashers, Till Stoeckius & Ralph Morris, Arctic Air Quality Impact Assessment Modeling Study: Final Project Report (2018) (report prepared by Eastern Research Group, Inc., and Ramboll under BOEM contract M12PC00014), *available at https://www.boem.gov/BOEM-2018-020/.*

[12] Bureau of Ocean Energy Management, Studies Development Plan 2020–2022 (2019), *available at https://www.boem.gov/FY-2020-2022-SDP/.*

[13] You can find an explanation of the process that BOEM and its predecessor agency, the MMS, used to develop these requirements in the preamble to the proposed rule (44 FR 27449 (May 10, 1979)) and the final existing air quality rule (45 FR 15128 (March 7, 1980)). Although BOEM presently manages the air quality regulatory program (AQRP), the U.S. Geological Survey largely wrote the original air quality regulations, which the Secretary approved. Since that time, MMS and then the Bureau of Ocean Energy Management, Regulation and Enforcement administered this program, before BOEM took responsibility for the AQRP in October 2011.

[14] In its evaluation of emissions through the use of the air quality spreadsheets, BOEM has historically and continues to require operators to report emissions based on the maximum rated capacity or maximum emissions estimate for their proposed type of equipment. Because any piece of equipment may emit more or less of any given air pollutant at any given time, depending on factors such as the type of fuel used, the length of time a piece of equipment is operated, the capacity utilization of the equipment, the workloads applied, the level of maintenance, etc., BOEM's spreadsheets calculate the highest level of emissions for each type of air pollutant that any piece of equipment is capable of emitting over any given period of time. The existing air quality spreadsheets calculate the highest annual and peak hour emissions for each type of equipment and those numbers are the ones used to evaluate whether the emissions exemption threshold has or has not been exceeded.

further analysis is required. In the event that an SL is exceeded, if that exceedance occurs in an attainment area (*i.e.,* an area where the NAAQS are not exceeded), a further analysis is required to determine if the increase would exceed the Maximum Allowable Concentration Increase (MACI) for that air pollutant. If not, no further analysis is required and the plan would be approved. If the MACI is exceeded, appropriate mitigations or controls would be required.

4. Control any emissions source proposed for or on any facility that modeling indicates could cause or contribute to an exceedance of the NAAQS.

The proposed rule would have significantly revised the existing regulations and would have more closely aligned DOI's regulations with those of the USEPA. The proposed rule sought to require operators to include in their regulated emissions, the emissions from activities that are not expressly authorized under OCSLA. However, the Secretary's statutory requirements differ substantially from those of the USEPA and so, based on BOEM's reassessment of the proposed rule in light of the public comments, such alignment is not appropriate. For example, compared to the time periods for plan review under OCSLA, the CAA and USEPA regulations provide for a very different process and timeframes for evaluating air quality permits. Congress, in providing the Secretary with this distinct statutory authority, specifically noted in the Conference Report that it did not intend the ''. . . application of section 5(a)(8) regulations [to] interfere with the time periods provided in the conference report for review and approval of exploration plans, and development and production plans.'' S. Rept. 95–1091, p. 86. Based largely on the extensive public comments received to the proposed rule, BOEM has determined that such an extensive alignment could: (1) Unduly burden the industry; (2) potentially complicate and duplicate other Federal agency requirements; (3) possibly raise legal questions regarding DOI's authority to adopt some of the proposed changes; and (4) potentially prevent BOEM from complying with the statutorily mandated timeframes for completing exploration and development plan reviews. For these reasons, BOEM has determined that the extensive revisions in the proposed rule are unnecessary.

This final rule incorporates a limited number of the changes in the proposed rule and retains the fundamental structure of the existing regulations. Because of this, it would not be practical to cite in this preamble every provision in the proposed rule that BOEM is not adopting in this final rule. However, several of the more significant proposed revisions that BOEM has not included in this final rule are discussed in the parts of the preamble responding to general comments and the Section-by-Section analysis. Among those proposed changes that BOEM is not adopting in the final rule are those that would have:

- Required the consideration of emissions from transiting support vessels, vehicles, or aircraft in the EET analysis.[15]
- Required BOEM's evaluation of air quality impacts arising from all right-of-use and easement grants (RUEs) and right-of-way grants (ROWs).[16]
- Required re-certification of existing facilities for compliance with existing air quality standards on a periodic basis.
- Changed the location at which BOEM evaluates air quality impacts from the coastal point nearest the offshore facility's most significant impact on a State's air quality based on prevailing winds to such a point on the seaward boundary of a State's submerged lands.[17]
- Specified how emissions should be determined and evaluated by equipment type and various usage rates (*i.e.,* emissions factors).[18]
- Added new criteria for aggregating emissions from multiple facilities to evaluate air quality impacts.[19]
- Added a detailed methodology for implementing emission reduction credits in lieu of emission reductions from controls applied to facilities, expanding on treatment of the matter in the existing regulations.
- Extended to Indian tribes the same opportunity afforded to States to comment on BOEM's consideration of a plan.[20] When the CAA was amended in 1990 to change the status of the Tribes with respect to air quality, Congress made no mention of extending analogous authority more broadly to other agencies. OCSLA was not mentioned in the discussion of these CAA amendments and no efforts were made on the part of Congress to extend this authority more broadly.
- Set criteria for adopting future EET changes without additional rulemaking.[21]
- Established new single source photochemical modeling requirements for ozone and $PM_{2.5}$ [22] that may be formed in the atmosphere from OCS facilities' emissions.[23]
- Replaced the table of MACI in 30 CFR 550.303(g)(2)(i)(A) [24] with a cross-reference to the codified USEPA Ambient Air Increments.[25]
- Established new requirements for how and when lessees and operators should measure and report emissions on an ongoing basis.
- Added various provisions intended to make the AQRP similar to that of USEPA's.
- Used the term ''significant impact level'' (SIL) in lieu of the term ''significance level'' (SL).[26]

[15] BOEM is not reducing the reporting requirements, themselves, as the emissions of all support vessels will still be reported in accordance in with the requirements of subpart B. In addition, support vessels that are temporarily connected either to the seabed or to a facility (such as well reworking vessels) will continue to be treated as facility emissions, in accordance with existing requirements for facilities, and will continue to be considered as part of the EET analysis. For a more detailed summary, see Part IV. Section-by-Section Analysis of Final Rule, Subpart B. Plans and Information (§ 550.218—What Air Emissions Information Must Accompany the EP?).

[16] For a more detailed summary, see Part IV. Section-by-Section Analysis of Final Rule, Subpart C. Pollution Prevention and Control.

[17] For a more detailed summary, see Part IV. Section-by-Section Analysis of Final Rule, Subpart C. Pollution Prevention and Control (Paragraph (e)(1)—Significance Levels).

[18] For a more detailed summary, see Part II. Background and Legal Authority, Subpart D. Key Provisions of the Final Rule (Air Quality Spreadsheets).

[19] For a more detailed summary, see Part IV. Section-by-Section Analysis, Subpart C. Pollution Prevention and Control (Paragraph (j)—Review of Facilities with Emissions Below the Exemption Amount).

[20] For a more detailed summary, see Part V. Key Statutes and Executive Orders, Subpart B. Executive Orders, section 5. Consultation with Tribes and Alaska Native Claims Settlement Act Corporations (E.O. 13175 and Other Authorities).

[21] For more detailed summaries, see Part II. Background and Legal Authority, Subpart C. BOEM's Air Quality Modeling Studies and Subpart D. Key Provisions of the Final Rule (Replacing the Term TSP). Also see Part IV. Section-by-Section Analysis of Final Rule, Subpart B. Plans and Information (§ 550.218—What Air Emissions Information Must Accompany the EP?).

[22] $PM_{2.5}$, or fine PM, is an airborne contaminant composed of particles having a diameter less than or equal to 2.5 micrometers.

[23] BOEM is using the USEPA's latest modeling guidance in Appendix W in a prudent manner consistent with BOEM's authorities and is working with the USEPA through the Interagency Workgroup on Air Quality Modeling (IWAQM). For more detailed summaries of the modeling processes, see Part II. Background and Legal Authority, Subpart D. Key Provisions of the Final Rule (Dispersion Modeling), and Part IV. Section-by-Section Analysis of Final Rule, Subpart B. Plans and Information (§ 550.218—What Air Emissions Information Must Accompany the EP?).

[24] To improve readability and avoid any confusion, all further regulatory section references in the main body of this notice are to 30 CFR part 550 unless otherwise specified. Footnotes will contain the complete citation.

[25] For a more detailed summary, see Part IV. Section-by-Section Analysis of the Final Rule, Subpart C. Pollution Prevention and Control.

[26] For more details, see Part IV. Section-by-Section Analysis of the Final Rule, Subpart C. Pollution Prevention and Control.

• Adopted a cross-reference to the regulations of the USEPA; instead, a table of updated relevant and applicable SLs applied by BOEM is included in this final rule, as described above.

• In addition, the proposed rule raised the issue of whether the SLs used by states should be incorporated into the table of SLs.[27] Upon further review of the comments received, BOEM has determined to continue to use the values reflected in USEPA regulations[28] in implementing the NAAQS. The existing regulation at § 550.303(g)(2)(i)(B) provides that no concentration of an air pollutant shall exceed the concentration permitted under the national secondary ambient air quality standard or the concentration permitted under the national primary air quality standard, whichever concentration is lowest for the air pollutant for the period of exposure. This section from the existing regulations will continue to be applied to ensure that no plan for an OCS facility will be approved if it would cause an exceedance of the NAAQS in any State.

III. Summary of Public Comments

A. Overview of Comments

BOEM received 81 written comments, consisting of several thousand pages of text, to the proposed rule. Only three comments were submitted by individuals. The remaining comments were submitted on behalf of organizations. Many comments were submitted on behalf of multiple parties; therefore, the number of organizations that submitted comments is significantly larger than the number of comments BOEM received.

The following industry and trade groups submitted comments: Alaska Oil and Gas Association (AOGA); American Petroleum Institute (API); Offshore Operators Committee (OOC); National Ocean Industries Association (NOIA); Independent Petroleum Association of America (IPAA); International Association of Drilling Contractors (IADC); Offshore Marine Services Association (OMSA); Jackson Offshore Operators; International Marine Contractors Association (IMCA); Truck and Engine Manufacturers Association (TEMA); and Louisiana Mid-Continent Oil and Gas Association.

Additionally, the following companies submitted individual comments: Arena Offshore; Anadarko Petroleum; ASRC Exploration; Barry Graham Oil Service LLC; British Petroleum; BR Petrobras; Chevron Corporation; Diamond Offshore; Edison Chouest Offshore; Fieldwood Energy; Gulfmark Americas Inc.; Hornbeck Offshore Services; Murphy Oil; LLOG Exploration; Odyssea Marine; Otto Candies LLC; Rowan Companies; Seacor Marine LLC; Sea Support Ventures LLC; Shell Oil; Tidewater Marine; Transocean; Walter Oil; and W&T Offshore.

The following non-governmental organizations (NGOs) submitted comments: Alaska Inter-Tribal Council; Alaska Wilderness League; Center for American Progress; Center for Biological Diversity; Clean Air Task Force; Earthjustice; Friends of the Earth; Greenpeace USA; and the Gulf Restoration Network.

Various Federal, State, local, quasi-governmental, and tribal organizations also provided comments, including the following: Arctic Slope Regional Corporation; Arctic Inupiat Offshore; North Slope Borough; the State of Alaska; the State of Louisiana; the State of Texas; USEPA; the National Park Service; the U.S. Forest Service; the Fish and Wildlife Service; and the U.S. Coast Guard. In addition, BOEM held meetings with a number of tribal groups, as discussed more fully in Part V. Key Statutes, Subpart B. Executive Orders, section 5. Consultation with Tribes and Alaska Native Claims Settlement Act Corporations (E.O. 13175 and Related Authorities).

In general, industry and industry trade groups took the position that the emissions generated from OCS sources do not represent a significant source of air pollution to the States and that the existing regulatory approach is adequate. They also raised the concern that some of the proposed changes would force them to incur high costs that would negatively impact exploration and development. Environmental NGOs generally took the opposite view, arguing that the regulations are outdated and inadequate to ensure that OCS facilities do not adversely impact the air quality of the States. The following includes more detailed description of certain comments received on the proposed rulemaking. BOEM addresses comments relevant to specific regulatory provisions in the Section-by-Section Analysis of the Final Rule in Part IV. of the preamble, to the extent that those comments are relevant to the changes BOEM is making in this final rule. In most cases BOEM is not specifically addressing comments related to the proposed regulatory provisions that BOEM is not adopting from the proposed rule; however, some such comments have been addressed when necessary to clarify BOEM's action on specific rule sections.

B. Why does BOEM need to update the air quality regulations?

Comment: Some comments stated that in various environmental analyses BOEM concluded that the OCS facilities it regulates do not significantly impact State air quality. Those commenters questioned why BOEM proposed extensive revisions to its air quality regulations despite the fact that the existing AQRP seems to be doing an adequate job of protecting State air quality. Some commenters also asserted that BOEM's 2012–2017 GOM lease sale environmental impact statement (EIS)[29] as well as various other BOEM documents specifically stated that the existing regulations have prevented adverse onshore air quality impacts. Those commenters argued, for that reason, that no changes are necessary for the air quality regulations.

Response: This final rule maintains the BOEM air quality existing regulations with only a few changes and retains the regulatory framework that has been in place since March 1980. This final rule is intended primarily to update obsolete or irrelevant provisions in the regulations that no longer reflect NAAQS standards and benchmarks. For example, USEPA's current list of criteria air pollutants no longer includes TSP, but does include PM_{10} and $PM_{2.5}$. This final rule adds SLs for PM_{10} and $PM_{2.5}$ and updates criteria air pollutants and SLs that the USEPA has revised since 1980.

C. Why issue a rule before the regional air quality studies are complete?

Comment: Some comments questioned proceeding with a final air quality rule while a study of air quality in the GOM region (GOMR) is ongoing.

Response: Partly based on these comments, the final rule does not adopt the provisions to which the commenters were objecting. Although the GOM region study is complete, it is being peer reviewed and BOEM plans to consider and respond to that peer review once completed.

This final rule adopts the values that the USEPA currently lists in 40 CFR

[27] While BOEM discussed this proposal in the preamble to the proposed rule and solicited comment on it, BOEM did not include this proposal in the proposed regulatory text.

[28] For a more detailed summary, see Part IV. Section-by-Section Analysis of the Final Rule, Subpart C. Pollution Prevention and Control.

[29] Gulf of Mexico OCS Region, Bureau of Ocean Energy Mgmt., Gulf of Mexico OCS Oil and Gas Lease Sales: 2012–2017, Western Planning Area Lease Sales 229, 233, 238, 246, and 248, Central Planning Area Lease Sales 227, 231, 235, 241, and 247, Final Environmental Impact Statement (2012) (OCS EIS/EA BOEM 2012–019).

51.165(b)(2) as SLs to be used by BOEM. The final rule also replaces outdated SLs for the former criteria air pollutant TSP in §§ 550.303(e) and 550.304(c) with PM_{10} and $PM_{2.5}$ SLs. The GOMR study is not relevant to these revisions.

BOEM intends to use the information from its GOMR and Alaska studies to inform future policy determinations and National Environmental Policy Act (NEPA) reviews. The studies also will provide information on the cumulative effects of activities that BOEM authorizes. BOEM is evaluating the results of a peer-review process of the GOM study which BOEM conducted in accordance with the OMB's ''Final Information Quality Bulletin for Peer Review,'' under which agencies must undertake a peer review of influential scientific information by specialists in the field who were not involved in producing the draft, before they disseminate the information to the public. This Bulletin also imposes minimum requirements for the peer review of highly influential scientific assessments. BOEM has determined that the GOMR study is a highly influential assessment and is complying with OMB peer review requirements as outlined in the OMB Bulletin for Peer Review.

D. Responses to Other Comments Made About the Proposed Rule

Comment: Some comments suggested that BOEM simplify the explanation of the term NAAQS found in existing § 550.303(g)(2)(i)(B) by referring to the list of NAAQS in 40 CFR part 50.

Response: BOEM finds it unnecessary to reference 40 CFR part 50 and believes that the existing reference to NAAQS in the referenced paragraph is sufficient. However, this final rule provides definitions for ''NAAQS'' and ''criteria air pollutant'' (which refers to the NAAQS) in §§ 550.105 and 550.302. The final rule makes corresponding changes to add ''criteria air pollutant'' where ''NAAQS'' are discussed. The APA specifically states that ''a sanction may not be imposed or a substantive rule or order issued except within jurisdiction delegated to the agency and as authorized by law.'' 5 U.S.C. 558. Adopting by reference a separate and distinct regulatory agency's regulations could lead to a future scenario in which an agency may promulgate a rulemaking, as defined in the APA as a ''statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy,'' that may have a significant impact on states, localities, or a regulated community over which that agency has no statutory jurisdiction or expertise. In such cases, the agency with jurisdiction may have little recourse to provide meaningful input aside from those provided in the formal rulemaking process unless a complete exemption is granted. Given the separate and distinct legal authorities of the USEPA and BOEM, BOEM believes that updating the NAAQS through the rulemaking process best affords ''interested persons an opportunity to participate'' through notice and comment while also adhering to the principles outlined in section 1 of E.O. 13771 ''Regulatory Planning and Review,'' which include: designing regulations ''in the most cost-effective manner to achieve the regulatory objective;'' tailoring regulations ''to impose the least burden on society . . .;'' and drafting regulations to be ''simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.''

Comment: Some comments suggested that BOEM should utilize two sets of SLs, one for attainment areas and one for non-attainment areas. These commenters argued that the proposed SLs were too stringent for attainment areas. Other comments suggested that the regulations should include interim SILs, recommended in USEPA guidance. Some comments suggested that DOI establish its own SL valuations for each criteria air pollutant—perhaps with a ''default'' level at 5 percent of the NAAQS—independent of the USEPA SIL valuations.''

Response: BOEM is updating the SL values to those the USEPA has established and applying these values to both attainment and non-attainment areas. BOEM has not established separate SLs for attainment and non-attainment areas in the final rule. The USEPA values set forth at 40 CFR 51.165(b)(2) apply in both areas; States also generally have one set of SLs for both areas in their permitting programs.

Comment: Various comments requested that BOEM interpret what it means by the phrase ''significantly affect the air quality of any State.'' 43 U.S.C. 1334(a)(8). Several commenters suggested that BOEM define this phrase in terms of causing an exceedance of the NAAQS; others, in terms of contributing to an exceedance. One commenter asserted that an exceedance of a SL and the corresponding NAAQS should both be required to qualify as significantly affecting the air quality of a State.

Response: The existing § 550.303(f)(1) defines that phrase as the projected emissions of any air pollutant other than VOC from any facility which result in an onshore ambient air concentration above the SL determined under paragraph (e), which lists the USEPA's SLs for criteria pollutants from 1980, for that air pollutant, shall be deemed to significantly affect the air quality of the onshore area for that air pollutant. Additionally, the existing § 550.303(f)(2) defines ''significantly affect'' with respect to VOC emissions as the projected emissions of VOC from any facility which is not exempt under paragraph (d), which lists the exemption threshold equations, for that air pollutant [*i.e.,* referring to an EET for VOC] shall be deemed to significantly affect the air quality of the onshore area for VOC. This final rule continues using SLs as the indicator of whether emissions significantly affect the air quality of any State and updates the SL values to conform with the NAAQS as updated by the USEPA.

In the regulation as amended by this final rule, there are two exceptions to the use of the SLs to determine whether emissions significantly affect the air quality of any State. First, with respect to VOCs, BOEM has retained the existing policy whereby an exceedance of the EET for VOCs is the criteria for determining whether emissions of VOCs significantly affect the air quality of any State. Second, BOEM recognizes that an air pollutant concentration could exceed the relevant NAAQS in rare circumstances when OCS emissions of criteria air pollutants from a facility that has an impact below the SLs are considered with the background concentrations of a relevant onshore area. In either of these two situations, BOEM would treat the plan in the same manner as it would handle a situation where the SLs had been exceeded.

Comment: Some comments questioned the proposed rule's definitions of ''attainment area'' and ''non-attainment area'' because none closely align with USEPA's usages. In particular, some commenters noted that BOEM's use of ''non-attainment area'' is narrower than that of the USEPA's because BOEM does not consider whether an area that is itself in attainment with the NAAQS may nevertheless be considered non-attainment, as USEPA may do, because it may cause a nearby area to fall into non-attainment.

Response: The existing regulations use the terms ''attainment area'' and ''non-attainment area'' differently than the USEPA. The USEPA's regulations provide for multiple categories of areas beyond these two categories (*e.g.,* attainment areas, maintenance areas, unclassifiable areas) whereas DOI's regulations treat all areas outside ''non-attainment'' as attainment areas. The existing regulations deliberately use this

simplified nomenclature to streamline the regulations, because the USEPA's categories are not relevant to implementing the Secretary's statutory authority. BOEM also left the definition more limited because OCSLA's statutory mandate is more limited than USEPA's under the CAA; considering the impact of OCS emissions on an area whose non-OCS emissions might impact a third area is outside the scope of OCSLA's statutory mandate. BOEM is not making any substantive change to the definition of either attainment or non-attainment areas.

Comment: Generally, industry commenters objected to the proposal to add photochemical modeling requirements when the EETs for PM or ozone precursors are exceeded. These commenters argued that BOEM has not determined that OCS operations are responsible for any State exceedance of PM or ozone NAAQS. They asserted that the contrary has always been true: OCS operations have never significantly affected any State with respect to PM or ozone. Next, these commenters pointed out that BOEM has not approved a photochemical model for secondary formation of PM or ozone. They state that the USEPA had not established any photochemical modeling guidelines. Finally, they pointed out that the proposed rule did not contain criteria for determining when to model ozone formation and argued that including such criteria in the final rule would likely be arbitrary.

Response: BOEM does not intend to require photochemical modeling under this final rule. The regulations do not currently require photochemical modeling. The existing §§ 550.218 and 550.249, however, require lessees and operators to follow the modeling guidelines in USEPA's regulations at 40 CFR part 51, appendix W. This cross-reference introduces ambiguity because the USEPA updated appendix W after the proposed rule was published and established guidelines for evaluating ozone and secondary PM formation, which may in some cases result in photochemical modeling for these pollutants. BOEM has determined that incorporating photochemical modeling into this final rule is inappropriate for several reasons. First, the existing regulations do not contain EETs addressing secondary criteria air pollutant formation except for the VOC EET and regulations do not provide a SL for ozone. Without these, BOEM lacks a basis for determining when ozone modeling should be required and what the results should be measured against. In the case of PM, the SL for $PM_{2.5}$ was based on dispersion modeling and was not intended to identify when photochemical modeling should be employed. Second, BOEM has not determined that an appropriate single-source photochemical model relevant to OCS operations exists; thus, there is no BOEM-approved photochemical model. Third, BOEM must wait until its air quality studies are completed and fully evaluated before it can determine whether OCS operations cause sufficient emissions of precursors to $PM_{2.5}$ and ozone to significantly affect the air quality of any State.

In order to avoid confusion, the final rule clarifies that the cross-reference to the USEPA's appendix W applies only to dispersion modeling.

Comment: Some commenters stated that the proposed rule would have impaired BOEM's ability to timely process applications for plan approvals.

Response: BOEM agrees that many of the proposed provisions would have added substantial burdens to both BOEM staff in reviewing plans and to operators' ability to fully conform to the proposed rule's provisions. OCSLA mandates particular timeframes for approval of EPs and DPPs (43 U.S.C. 1334(c)(1) and 1351(h)(1)) and the regulations similarly provide a timeframe for review of DOCDs (30 CFR 550.267). The proposed rule would have made meeting these deadlines difficult. Congress specifically noted in the 1978 Conference Report that the regulations under section 5(a)(8) should not ''interfere with the time periods provided . . . for review and approval'' of plans. Moreover, BOEM is aware that the procedure and the associated timeframes for making and appealing permitting decisions under the CAA are very different from those under its authorities. Congress too was aware of these differences when they passed legislation to transfer authority to regulate air quality on the Arctic OCS in 2011. Consolidated Appropriations Act, 2012, Public Law 112–74, section 432, December 23, 2011; see also, The American Energy Initiative, Part 4: H.R. ____, The Jobs and Energy Permitting Act of 2011: Hearing Before the Subcommittee on Energy and Power of the Committee on Energy and Commerce, 112th Cong. 37 (2011). In any case, BOEM is not finalizing the proposed provisions that gave rise to these comments.

Comment: Some commenters voiced opposition to the proposed provision on ''Mobile Support Craft.'' Others complained that the proposed requirement was unclear as to whether sources on support vessels would be subject to control requirements. Other commenters urged that BOEM must regulate such sources directly.

Response: BOEM is not adopting these proposed provisions. As explained in more detail later, the proposed provisions were legally questionable and raised numerous practical problems.

Comment: Some commenters expressed support for BOEM regulating pollutants for which there is no NAAQS, including greenhouse gasses.

Response: BOEM requested comment on this issue but did not propose any particular regulatory provisions. BOEM's ability to regulate air quality is limited to the authority provided to the Secretary in section 5(a)(8). The authority granted in section 5(a)(8) is limited to ensure compliance with the NAAQS, and therefore that provision does not grant authority to regulate emissions that have no relation to attaining a NAAQS.

Comment: BOEM received comments opposed to the proposed provisions requiring that in certain circumstances emissions from multiple facilities be combined. Commenters expressed concerns about the practical difficulties in complying with these provisions and pointed out that BOEM failed to provide sufficient reasons why such provisions were necessary.

Response: BOEM is not adopting the proposed provisions. BOEM agrees that the proposed provisions were unnecessary, and BOEM believes that these proposed provisions were unduly burdensome.

Comment: Some commenters raised both legal and practical problems with the proposal to evaluate impacts at the State's seaward boundary. The commenters assert that there is a lack of reliable information about the background concentrations at the state seaward boundary because of a lack of offshore monitors. Moreover, they pointed out that different states have different seaward boundaries under the Submerged Lands Act. These commenters noted that it is appropriate to consider NAAQS compliance and associated onshore impacts at the shoreline and inland where public exposure and protection is the primary focus. Other commenters expressed support for this aspect of the proposal.

Response: As discussed in more detail below, BOEM is not adopting this aspect of the proposal. BOEM generally agrees with the practical difficulties over which commenters expressed concerns. The clearly expressed intent of Congress in the 1978 Conference Report was that the regulations under section 5(a)(8) regulate the onshore impacts to State air quality.

Comment: Proposed § 550.310(c) would have required lessees to re-submit previously approved plans at least every 10 years to verify compliance with the existing air quality regulations, including those provisions relating to new information gathering and reporting requirements.

Some commenters suggested that the proposed requirement to re-submit plans every 10 years could be inconsistent with section 25(h)(3) of OCSLA, which indicates that BOEM should review existing plans ''based upon changes in available information and other onshore or offshore conditions affecting or impacted by development and production pursuant to such plan.'' Current § 550.303(j) authorizes the Regional Supervisor to require submittal of additional information when he or she judges an individual facility alone or in combination with others may significantly affect the air quality of an onshore area. These same commenters have asserted that this existing regulatory provision should be sufficient for BOEM to address any isolated situation where one or more facilities may be causing harm to any State(s). For these reasons, commenters assert that BOEM should not require the routine resubmission and additional approval of existing plans.

Response: BOEM has decided not to adopt these proposed provisions. Based on its review of the public comments received, BOEM has determined that requiring a periodic re-review of all plans would be inappropriate. BOEM believes that reconsideration of previous approvals should not be undertaken lightly and is not warranted based on the mere passage of time. Operators depend on BOEM's approval of their plans, and BOEM should not upset these expectations without good cause. For these reasons, the proposal to periodically re-review and re-approve existing plans is not being adopted with this final rule.

BOEM's responses to other stakeholder commenters are available in Part III. Summary of Public Comments, Subpart E. Comments on the Regulatory Impact and Information Collection Analyses, and Part IV. Section-by-Section Analysis of the Final Rule of this preamble below.

E. Comments on the Regulatory Impact and Information Collection Analyses

Comments: Ten comments addressed both BOEM's initial regulatory impact analysis (IRIA) and information collection (IC) analysis; an additional 12 comments focused solely on the IRIA. Overall, the commenters addressed the benefits of the rule (in terms of emissions reductions) compared to the burdens (*i.e.,* costs), necessity, practical utility, burden reduction, and accuracy of the proposed collections. The comments raised a number of questions regarding the calculations and estimates provided by BOEM with the proposed rule.

Response: Commenters questioned the estimated IC costs under the proposed rule. Partly in response to those comments, the final rule does not appreciably impact the annual burden hours or non-hour costs currently authorized under OMB control numbers 1010–0114 (30 CFR part 550, subpart A, ''General''), 1010–0151 (30 CFR part 550, subpart B, ''Plans and Information''), and 1010–0057 (30 CFR part 550, subpart C, ''Pollution Prevention and Control''). Therefore, BOEM is not seeking OMB approval for any new annual burden hours or non-hour cost burdens.

Because the final rule does not change overall IC burdens, BOEM only will seek OMB approval for revising the air quality spreadsheets, BOEM–0138 and BOEM–0139.

IV. Section-by-Section Analysis of the Final Rule

This part of the preamble provides a section-by-section analysis of the regulations promulgated in this final rule.

Part 550—Oil and Gas and Sulphur Operations in the Outer Continental Shelf

Subpart A—General

§ 550.105 Definitions

The existing regulations define ''air pollutant'' as any combination of agents' for which the USEPA has established primary or secondary NAAQS. 30 CFR 550.302. Under the CAA, such combinations of agents are defined as ''criteria air pollutants.''

However, the regulations use the term ''air pollutant'' inconsistently and, in some instances, contrary to its definition. For example, § 550.303(e) discusses ''air pollutants other than VOCs,'' suggesting that VOCs meet the definition of an air pollutant; and § 550.303(d) implies that VOCs meet the definition of ''air pollutant'' because the referenced exemption formulas for ''emissions from the facility for each air pollutant'' include a formula for VOCs. However, VOCs fall outside the stated definition of ''air pollutant'' because NAAQS have not been established for them.

The proposed rule would have added a definition for ''criteria air pollutant,'' would have redefined ''air pollutant,'' and would have used those terms consistent with their definitions throughout the regulations. The proposed definition of ''air pollutant'' was very broad and included categories of emissions (*i.e.,* hazardous air pollutants) that fell outside the Secretary's statutory authority to regulate because NAAQS have not been established for them.

The final rule completely eliminates a regulatory definition for ''air pollutant'' [30] and adds a definition for ''criteria air pollutant.'' The final rule replaces the term ''air pollutant'' with ''criteria air pollutant'' in §§ 550.105, 550.302, and 550.303(f)(1) and (g)(2)(i)(B), and in the definitions of ''attainment area'' and ''nonattainment area.'' The final rule replaces the term ''air pollutant'' with ''criteria air pollutant and VOC'' in §§ 550.105 and 550.302 definitions of ''best available control technology (BACT).'' The final rule replaces the term ''air pollutant'' with ''criteria air pollutant or VOC'' in § 550.303(h). The final rule replaces the term ''air pollutant'' with ''criteria air pollutant, VOC, or TSP'' in §§ 550.249(a)(2) and 550.283(a)(4). The final rule replaces the term ''air pollutant'' with ''criteria air pollutant, VOC, and TSP'' in §§ 550.303(d) and 550.304(b). The final rule replaces the term ''air pollutant other than VOC'' with ''criteria air pollutant'' in §§ 550.303(g)(1) and (2) and 550.304(d)(1). Finally, the final rule deletes the phrase ''for that air pollutant'' in § 550.303(f)(2) because the existing provision only relates to VOCs. These changes clarify the existing regulations to address perceived inconsistency.[31]

The definition set out in the regulatory text below is essentially the same as that in the proposed rule. However, the proposed rule also included a reference to 40 CFR part 50, which BOEM has not adopted for the reasons previously described. This aspect of the final rule (*i.e.,* eliminating the ''air pollutant'' definition, but adding a similar one for ''criteria air pollutant'') is not substantively different from the existing regulations and will have no effect on the administration of the AQRP.

Consistent with a similar change made in other places throughout this

[30] Instead of a specialized regulatory definition, BOEM will rely on the plain dictionary meaning of the term ''air pollutant'' in this part.

[31] The criteria pollutants are Sulfur Dioxide, Nitrogen Oxide, Carbon Monoxide, Lead, Ozone, and Particulate Matter, of which there are several forms, two of which, $PM_{2.5}$, and PM_{10}, have defined NAAQS.

final rule, BOEM is updating the definition of the terms ''attainment area'' and ''non-attainment area'' by replacing the term ''air pollutant'' with ''criteria air pollutant'' in the definition of each of these terms.

BOEM is making this change for clarification purposes only. The final rule definition of ''attainment area'' excludes part of the proposed definition that would have referred to USEPA regulations explicitly and instead continues BOEM's practice of referring to attainment areas by stating that these consist of all areas not designated as non-attainment.[32]

By the same token, the definition of ''non-attainment area'' in § 550.105 would change. The meaning of the definition of the term ''non-attainment area'' remains the same as in both the existing and proposed regulation. Although the existing regulations refer to air pollutant, and not criteria air pollutant, the definition of air pollutant in the existing regulations was limited to criteria pollutants. This use of the term air pollutant is misleading because it typically has a broader meaning. For example, hazardous pollutants would not be covered. Secondly, the existing regulations referred to air pollutants as both including and excluding precursors, specifically VOCs. In this final rule, we define only the term ''criteria air pollutant'' and, in each relevant provision, specifically mention any non-criteria pollutant we are referencing (*e.g.,* TSP and VOCs).

BOEM left the definition more limited because OCSLA's statutory mandate is more limited than that imposed under the CAA considering the impact of OCS emissions on an area whose non-OCS emissions might impact a third area is outside the scope of OCSLA's statutory mandate.

For the same reason, the definition of BACT was also revised in §§ 550.105 and 550.203. In this instance the term ''air pollutant'' referred both to criteria air pollutants[33] and VOCs and the definition of BACT was changed accordingly.[34]

Consistent with a similar change made in other places throughout this final rule, BOEM is updating the definition so that it also applies to DOCDs. Thus, the updated definition of ''emission offsets'' in § 550.105 reads as set out in the regulatory text below.

Consistent with a similar change made in other places throughout this final rule, BOEM is updating the definition so that it also applies to DOCDs. Thus, the updated definition of ''existing facility'' in § 550.105 reads as set out in the regulatory text below.

The effect of this change is to include the DOCD among the list of plans referenced in the definition. The final rule does not make any of the other proposed changes to this definition.

BOEM is moving the definition of ''volatile organic compound'' from § 550.302 to § 550.105, where alphabetical order dictates. That term is used in subpart B, but is not defined in the existing regulations until subpart C. Because the definitions in subpart C technically apply only to subpart C, BOEM is adding this term to the general definition section in subpart A.

Subpart B—Plans and Information

§ 550.218—What Air Emissions Information Must Accompany the EP?

Paragraph (e) in the proposed rule provided that for every facility described in your plan, you must identify the maximum projected emissions for each criteria and major precursor air pollutant by calculating the annual rate (for each calendar year), the maximum 12-month rolling sum, and the maximum peak hourly rate for your facility emissions under paragraph (c)(2) and your attributed emissions under paragraph (d)(6).

This would have required lessees and operators to provide emissions data on an annual, 12-month rolling sum, and maximum and peak hourly basis for criteria air pollutants, VOCs, and ammonia.

The final rule does not implement the proposed rule requirement for lessees and operators to provide and analyze 12-month rolling sum emissions. This final rule also does not implement the proposed rule requirement that operators report emissions data for ammonia.

As was the case with the proposed rule, § 550.218(a) requires lessees and operators to include in their EPs a table showing both projected emissions of all criteria air pollutants for which there is a NAAQS and projected emissions of VOCs. The requirement is the same as § 550.218(a) in the existing regulations, but the list of pollutants is replaced with reference to ''criteria air pollutants,'' as defined by the USEPA. The lessee or operator must submit the information required by this section with the EP and BOEM will use the submitted information in evaluating the EP. BOEM made appropriate changes to implement this provision in both § 550.218(a) and (e).

Because of the change to the regulatory text, which replaced the enumeration of specific criteria pollutants with a reference to criteria pollutants generally, additional criteria pollutants were added to § 550.218(a). Of these, three criteria air pollutants (lead, $PM_{2.5}$, and PM_{10}) will have reporting requirements without an EET corresponding to those air pollutants. As stated in the proposed rule, BOEM lacks sufficient data to update the EETs at this time.

Subpart B of the existing regulations specifies what data and information must be included in a plan. Subpart C specifies how that data should be analyzed and what the operator must do, depending on the results of the analysis. Although BOEM modified subpart B of the existing regulations several years ago to require operators to report PM_{10} and $PM_{2.5}$ emissions, that change was not accompanied by a corresponding change to subpart C. As a result, although BOEM requires operators to report PM_{10} and $PM_{2.5}$ data, the EET formula for PM in §§ 550.303(d) and 550.304(b) requires an analysis of data for TSP. Unfortunately, the existing regulations did not explain how to resolve the discrepancy between subpart B's data reporting requirements and subpart C's data utilization requirements.

Because BOEM has determined that it does not yet have a proper scientific basis to consider revising the formulas in §§ 550.303(d) and 550.304(b), BOEM has decided to instead update §§ 550.218(a) and 550.249(a), applicable to exploration and development plans respectively, to specify that operators should also report data for TSP. As noted previously, because the SL for TSP has been replaced by new SLs for PM_{10} and $PM_{2.5}$, if an operator uses the EET formula for TSP and determines that its emissions exceed the EET, it would be required to model emissions of PM_{10} and $PM_{2.5}$, not TSP, and to compare the results with the significance levels for PM_{10} and $PM_{2.5}$. In the event that the significance levels for PM_{10} and $PM_{2.5}$ are exceeded, additional modeling of TSP may be required to determine whether the

[32] The USEPA has multiple designations for areas that BOEM refers to as ''attainment areas,'' and BOEM regulations do not mirror the USEPA regulations, in part because of this. Given OCSLA's more limited air quality mandate, there is no reason for BOEM to classify onshore areas into more categories.

[33] The Solicitor's Office prepared a memorandum from Associate Solicitor, Energy and Resources, to Deputy Assistant Secretary, Land and Minerals Management, Authority to Require Air Pollution Controls on Vessels in Transit to Outer Continental Shelf Facilities (June 15, 1987).

[34] The definition of air pollutant in BOEM's existing regulations did not clearly make a distinction between criteria air pollutants and those pollutants that are not criteria air pollutants (*i.e.,* VOCs) but contribute to the formation of criteria air pollutants. This rule intends to correct that error.

emissions exceed the MACIs, as defined in 30 CFR 550.303(g)(2)(i)(A).

In order to determine if the projected emissions associated with its plan exceed the relevant SLs, the operator would be required to use a BOEM-approved model, in accordance with the existing requirements of § 550.218(e) and (f), in the case of an EP, or § 550.249(e) and (f), in the case of a DOCD or DPP. Any dispersion modeling would also have to be conducted using a methodology consistent with USEPA modeling requirements outlined in appendix W of 40 CFR part 51, in accordance with the existing requirements of § 550.218(e), in the case of an EP, or § 550.249(e), in the case of a DPP.

This final rule amends §§ 550.218(e) and 550.249(e) to make clear that the reference to appendix W is applicable only insofar as it is relevant to dispersion models. On January 17, 2017, subsequent to the publication of the air quality proposed rule, the USEPA published a final rule entitled, ''Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter'' (82 FR 5182, EPA–HQ–OAR–2015–0310; FRL–9956–23–OAR, RIN 2060–AS54). This final rule updated the list of approved air quality models and the modeling guidelines associated with the remaining USEPA-approved air quality models. Notably, the USEPA rule newly allowed the use of single-source chemical transport models, which typically involve photochemical modeling, to evaluate the impacts of new and modified emissions sources with respect to the formation of ozone and the secondary formation of $PM_{2.5}$ when more general analyses for an area are not sufficient. But, this amendment to appendix W did not require the use of such models either. Still because appendix W is cross-referenced in BOEM's existing regulations, the update made by the USEPA could have been interpreted to imply that BOEM would also support the potential use of photochemical modeling for ozone and secondary formation of $PM_{2.5}$. This final rule makes clear that this is not the case.

Based in part on the public comments received, BOEM understands that single source photochemical modeling is only starting to be used, that its use and application is complex, and that the costs of doing such modeling can be high. Also, the timeframes for review of CAA permits that involve photochemical modeling under appendix W are much longer than the timeframes required by the OCSLA for BOEM to review plans. Furthermore, BOEM's studies will provide relevant information as to whether or not OCS sources may impact State air quality with respect to ozone or PM. Accordingly, it would be unwarranted to require the complex photochemical modeling to evaluate ozone or PM formation. As stated previously, this final rule does not adopt any requirements for photochemical modeling. To resolve any potential confusion regarding the cross-reference to appendix W in the existing regulations, BOEM is modifying the relevant language in §§ 550.218(e) and 550.249(e) to clarify that the regulations as amended by this final rule do not, under any circumstances, require that an operator apply photochemical modeling to its analysis of its air pollutant emissions. The existing language provides that when BOEM requires air quality modeling, you must use the guidelines in appendix W of 40 CFR part 51 with a model approved by the Director. The revised language provides that when BOEM requires air quality dispersion modeling, you must use the guidelines in appendix W of 40 CFR part 51 for dispersion modeling with a model approved by the Director.

The USEPA's current list of criteria air pollutants includes ozone and the USEPA has defined a NAAQS for ozone. OCS operations do not result in the emission of ozone directly. To address this, however, BOEM does evaluate emissions of VOCs, which is an ozone precursor, under the existing regulations.

The proposed rule would have eliminated § 550.218 entitled, ''What air emissions information must accompany the EP?'' from the existing regulations because all BOEM air quality requirements in subpart B of part 550 of the existing regulations were proposed to be consolidated in a new § 550.205.

BOEM received a number of comments to the effect that it would be simpler to make changes to the relevant sections, rather than consolidate them into a new section. Given the more limited nature of this final rule compared with the proposed rule, BOEM has decided to leave the existing regulatory organization intact and instead make the limited amendments directly to the relevant sections.

The proposed rule would have required that lessees and operators identify the emissions of facilities and support vessels separately and report both in terms of an ''annual rate (for each calendar year), the maximum 12-month rolling sum, and the maximum peak hourly rate.'' This final rule retains the existing regulation's language requiring reporting of annual emissions and peak hourly emissions, as defined in § 550.218(a)(1), but does not adopt the proposed reporting requirements for a 12-month rolling sum. The regional air quality studies will evaluate the cumulative effects of OCS emissions on the States and whether any additional emissions tests or evaluations may be necessary.

The proposed provision to add a maximum 12-month rolling sum provision was intended to address situations where a proposed plan would involve drilling beginning in one calendar year and ending in a subsequent calendar year, thereby splitting the emissions across calendar years and potentially undercounting the actual annual emissions. Commenters noted that there are many ways to calculate rolling averages and that there are also multiple ways to utilize the results in attempting to model the effects of emissions at various destination points. These same commenters noted that most air quality models are not equipped to handle multiple annual projects and this requirement would ''add an extra burden to post-processing the model results that is not included in most modeling systems. Such uncertainty could lead to considerable modeling costs of questionable value that have not been anticipated by the agency.'' Because BOEM has decided that it would be best to first evaluate in connection with its studies where and under what circumstances emissions from multi-year operation of OCS facilities may affect the States, BOEM has determined that this requirement should not be implemented until more information about such effects has been evaluated.

BOEM is deferring any consideration about amending the regulations to add new EETs corresponding to non-annual emissions averaging times for the criteria air pollutants pending the evaluation of results of its air quality studies. For that reason, in this final rule, BOEM has made no changes to the time intervals or forms for which reporting is required in either § 550.218(a)(1) or § 550.249(a)(1). Lessees or operators will continue to provide peak hourly and total annual emissions, but not 3-hour, 8-hour, or 24-hour, or rolling emissions data, nor any new data related to the form of the NAAQS (*e.g.,* the number of times that a pollutant concentration level is exceeded).

The proposed rule stated in § 550.205(b) that lessees and operators must in each plan, for each criteria and major precursor air pollutant, calculate

the attributed projected annual emissions for each mobile support craft (MSC). Instead, this final rule requires in § 550.218(a) (for EPs) that lessees and operators provide tables showing the projected emissions of criteria air pollutants, volatile organic compounds (VOC), and TSP generated by your proposed exploration activities. As previously stated, the final rule does not adopt the proposed reporting requirements for a 12-month rolling sum.

As noted previously, BOEM refers to air pollutants that contribute to the formation of a criteria air pollutant as precursor air pollutants. In order to ensure that the NAAQS standards for these pollutants are not exceeded, DOI must also regulate the emissions of both the criteria air pollutants and the precursor air pollutants. Historically, the major precursor air pollutant that DOI has regulated is Volatile Organic Compounds (VOCs). In addition to VOCs, the proposed rule identified Hydrogen Sulfide (H_2S) as a precursor for Sulfur Dioxide (SO_2); Nitrogen Oxides (NO_X), VOCs and Carbon Monoxide (CO), as precursors for Ozone (O_3); and NO_X, VOCs, Fine Particulate Matter ($PM_{2.5}$), Sulfur Oxides (SO_X) and Ammonia (NH_3), as precursors for $PM_{2.5}$. The proposed rule suggested that DOI require the collection of additional data on these precursors and that new formulas be created to evaluate precursor pollutants in their capacity as precursors. In particular, DOI suggested that lessees and operators be required to start reporting ammonia emissions. VOCs and ammonia were classified as ''major precursor pollutants'' under the proposed rule because these precursors were included in the list of pollutants for which States would be required to gather emissions data to comply with USEPA requirements.

The final rule does not adopt the concept of ''major precursor pollutant'' that was included in the proposed rule. As is the case in the existing regulations, the only non-criteria air pollutants included in the final rule are VOCs and TSP. The proposed rule would also have included ammonia under the heading of ''major precursor pollutant.'' BOEM has decided not to add ammonia at this time. There were several reasons for this. First, as is the case with all the EETs, BOEM does not believe that it has an adequate scientific basis for establishing new formulas. Indeed, BOEM never had an EET for ammonia. Second, it is not clear that ammonia is emitted from OCS facilities in quantities sufficient to cause a significant effect to any State. Third, since ammonia is primarily a precursor for $PM_{2.5}$ and BOEM does not have an EET for $PM_{2.5}$, it is unclear how a formula should be determined. Although BOEM is modifying the air quality spreadsheets to calculate ammonia emissions on behalf of operators, BOEM has determined not to add an EET for ammonia or to add any requirements (including requirements for photochemical modeling) for ammonia to this final rule, though BOEM will continue to evaluate and review its study results.

This final rule is not adopting the proposed changes regarding MSC as was proposed in a new section 30 CFR 550.205. The proposed section would have required lessees and operators to add vessel emissions to those of facilities and the proposed Subpart C would have required lessees and operators to compare the total emissions against the EETs.

The final rule is not adopting these proposed changes for two reasons. First, it is questionable whether BOEM has legal authority to include vessel emissions as proposed. The Secretary's statutory authority is distinct from that of the USEPA under the CAA. The CAA explicitly authorizes the Administrator of the USEPA to regulate emissions from vessels servicing or associated with an OCS source within 25 miles of the OCS source in specific areas of the OCS. 42 U.S.C. 7627. In contrast, OCSLA only authorizes the Secretary to regulate air pollutants from ''activities authorized'' by OCSLA. OCSLA, section 5(a)(8). The Office of the Solicitor has previously opined that vessel traffic to and from OCS facilities is not an activity ''authorized'' under OCSLA, rendering requirements to count vessel emissions in regulating facilities potentially beyond the scope of the Secretary's statutory authority.[35] For these reasons, the proposed provision is not appropriate in implementing section 5(a)(8) of OCSLA.

Second, in addition to legal concerns, commenters pointed out practical difficulties involved in requiring operators to prepare plans with the highly specific details about vessel emissions sources that the proposed rule would have required. Commenters also pointed out that no state has identified emissions from vessels supporting OCS operations as a significant contributor to onshore air pollutant concentrations. For these reasons, and because section 5(a)(8) of OCSLA does not require BOEM to consider vessel traffic to and from OCS facilities in order to determine modeling and control requirements, BOEM is not adopting the proposed changes on this point. Existing §§ 550.224 and 550.257 require operators to report emissions from their support vessels within 25 miles of their facilities in their EP or DPP or DOCD, and this final rule does not affect those sections.

[35] The Solicitor's Office prepared a memorandum from Associate Solicitor, Energy and Resources, to Deputy Assistant Secretary, Land and Minerals Management, Authority to Require Air Pollution Controls on Vessels in Transit to Outer Continental Shelf Facilities (June 15, 1987).

§ 550.249—What air emissions information must accompany the DPP or DOCD?

For the same reasons as discussed under § 550.218 above, BOEM has made changes to § 550.249(a) and (e) that mirror those changes made to § 550.218.

In addition, BOEM has replaced the term ''air pollutant'' with ''criteria air pollutant, VOC, or TSP'' in the one place the term appears in paragraph (a)(2). This latter change, which is consistent with the proposed rule, does not change the substantive requirements of this paragraph.

As noted in the discussion for § 550.218(e), BOEM is modifying the requirement to perform air quality modeling using the guidelines of the USEPA's appendix W to clarify that operators must only comply with the modeling guidelines of appendix W to the extent that they are required to perform dispersion modeling.

BOEM did not receive any comments that would be relevant to the changes made to this section of the final rule.

§ 550.283—When must I revise or supplement the approved EP, DPP, or DOCD?

BOEM has replaced the term ''air pollutant'' with ''criteria air pollutant, VOC, or TSP'' in § 550.283(a)(4), to make the wording consistent with the changes made to the other sections of the rule. This change is consistent with BOEM's interpretation of the existing regulatory text. Because this section deals with when a revision to an EP, DPP, or DOCD is required, and VOCs and TSP are specifically listed in existing §§ 550.218 and 550.249, the existing provision has been interpreted to include VOCs and TSP.

BOEM did not receive any comments that would be relevant to the changes made to this section of the final rule.

Subpart C—Pollution Prevention and Control

The proposed rule would have replaced all references to exploration or development plans with a generic term ''plan'' and the new term ''plan'' would have encompassed all EPs, DPPs, DOCDs, RUEs, pipeline ROWs, and

lease term pipelines. Section 550.205 of the proposed rule, which outlined all of the reporting requirements, was accordingly entitled, ''What air emissions information must be submitted with my Plan (EPs, DPPs, DOCDs, or application for a RUE, pipeline ROW, or lease term pipeline)?'' The intention was that all EPs, DPPs, DOCDs, RUEs, pipeline ROWs, and lease term pipeline applications would be subject to the same air quality requirements. This approach was consistent with the proposed rule's goal to consolidate all air quality requirements in one place, rather than follow the structure of the existing regulations that lists separate requirements, in separate sections, for each type of plan.

Because BOEM no longer intends to consolidate all the air quality data requirements into one section, the changes that BOEM is implementing with this final rule are made separately by section. The text of subpart C of part 550 in the existing regulations refers only to EPs and DPPs. Because BOEM also uses DOCDs to review and approve production plans, BOEM is replacing all references to DPP with references to DPPs or DOCDs, or both (depending on the context). BOEM is not including the proposed references to pipeline ROWs, RUEs, and lease term pipelines in this final rule. BOEM ensures that lessees and operators address lease term pipelines and RUEs within the DPP or DOCD review process. See existing § 550.241 (regarding lease term pipelines) and Notice to Lessees and Operators (NTL) No. 2015–N06 (regarding RUEs). Since our existing program relies on plan reviews and since lease term pipelines and any facilities on a RUE must be described in a plan, this issue can readily be addressed under BOEM's and the Bureau of Safety and Environmental Enforcement's (BSEE) procedures for implementing the existing regulations. The proposed references to lease-term pipelines and RUEs are unneeded.

According to the requirements outlined in NTL No. 2007–G09, BOEM collects information on emissions from the installation or operation of any new or modified accessory platform on a ROW whenever an application is submitted to BSEE. Based on BOEM's review of the information that BSEE has collected, BOEM is not aware of any such facilities on ROWs that would exceed the EETs, and so BOEM believes that such facilities are not causing significant effects to any State's air quality. Therefore, BOEM is not adopting the proposed language on ROWs with this final rule.

§ 550.302—Definitions Concerning Air Quality

BOEM made the following changes in this final rule in a manner consistent with the proposed rule:

Air pollutant. The term ''air pollutant'' was defined in § 550.302 in the existing regulations to mean any combination of agents for which the Environmental Protection Agency (EPA) has established, pursuant to section 109 of the Clean Air Act, a national primary or secondary ambient air quality standard.

This definition is essentially the definition for ''criteria air pollutants,'' not for air pollutants generally, since it excludes many substances defined by the USEPA as air pollutants (*e.g.,* precursor air pollutants or hazardous air pollutants), including some air pollutants referenced in DOI's existing regulations (*i.e.,* hydrogen sulfide and VOC).

The existing definitions of the terms ''attainment area,'' ''non-attainment area,'' and BACT all contain the term ''air pollutant'' and this final rule replaces the term ''air pollutant,'' in those definitions with either the newly defined term ''criteria air pollutant'' or ''criteria air pollutant or VOC,'' as appropriate.

To ensure that there is no confusion regarding the meaning of the term ''criteria air pollutant,'' BOEM has included a definition of the term ''criteria air pollutant'' in § 550.302 providing that it's any air pollutant for which the Environmental Protection Agency (EPA) has established a national primary or secondary ambient air quality standard pursuant to section 109 of the Clean Air Act.

Despite the fact that the existing definition of air pollutant in § 550.303 refers only to criteria air pollutants, the usage of the term ''air pollutants'' in the existing regulations may have been read to mean that the regulations were applicable more broadly. For instance, § 550.303(e) refers to ''air pollutants other than VOC,'' even though VOC is not within the scope of the definition of ''air pollutant.'' Section 550.303(d) requires the evaluation of various air pollutants, including VOC. Section 550.283, discussed above, refers to conditions under which a lessee or operator would be required to submit a revised plan as being any time ''you propose to increase the emissions of an air pollutant to an amount that exceeds the amount specified in your approved EP, DPP, or DOCD;'' a reference which, given the apparent purpose of the provision, should also include VOCs and TSP. Thus, the term ''air pollutant'' has not been used consistently and in line with the requirements specified in the regulations that refer to the term ''air pollutant.''

To correct this problem, BOEM has replaced the definition of the term ''air pollutant'' with a definition of the term ''criteria air pollutant'' and made related edits to the existing regulations to address these issues, as previously noted in discussion of subpart A, above.

The proposed rule would have revised the definition of ''air pollutant'' to include hazardous air pollutants and greenhouse gases, as well as criteria air pollutants and precursor air pollutants. BOEM received comments both in favor and opposed to expanding the scope of the regulations beyond criteria air pollutants and precursor air pollutants. Generally, industry argued that the Secretary's authority under OCSLA did not permit BOEM to regulate for anything else. Environmental groups argued the opposite. After reviewing the comments, BOEM determined that limiting the scope of this rulemaking to that of the existing regulations would be appropriate. Although this final rule has replaced some references to specific pollutants with general references to criteria air pollutants, it does not add or subtract any air pollutants from the list of criteria pollutants in the existing regulations.

Emission exemption threshold (EET). According to OCSLA, the Secretary shall prescribe regulations to ensure compliance with the NAAQS to the extent that certain authorized activities ''significantly affect the air quality of any State.'' There are two ways that operators can demonstrate this. They can perform a detailed analysis of their proposed pollutant emissions through the use of complex air quality models. Alternately, they can demonstrate that their emissions are below a BOEM-determined exemption level. This has long been the practice employed under OCSLA's distinct authorities.

The adoption and use of the term ''Emissions Exemption Threshold'' does not make any substantive change to the air quality regulations. BOEM has always had a mechanism to determine whether an offshore operator proposing to explore or develop oil and gas on the OCS should be exempt from air quality modeling. BOEM has historically used a number of terms (*e.g.,* exemption amount, exempt emissions, ''E,'' exempt plans, and exemption levels) to define these values. This change is being made to establish a single term and to clarify the purpose and intent of the existing exemptions calculations and does not affect the formulas, or their usage, in any way.

The term ''threshold'' reflects the fact that emissions reported in a plan below that amount do not require the operator to model its air quality impacts. On the other hand, emissions above the ''threshold'' are subject to further air quality modeling and evaluation and may be subject to mitigation requirements. For that reason, BOEM believes that the term ''threshold'' more accurately reflects the nature and purpose of the EETs.

BOEM added a definition in this final rule to clarify the purpose and use of the acronym EET. The proposed rule in § 550.302 defined this term as the maximum allowable rate of projected emissions, calculated for each air pollutant, expressed as short tons per year (tpy), above which facilities would be subject to the requirement to perform modeling.

The final rule in § 550.302 defines the term as the rate of projected emissions, calculated for a criteria air pollutant or VOC or TSP, above which a facility would be subject to the requirements of § 550.303(e) through (i) or § 550.304(b) through (e).[36]

In drafting the final rule, BOEM came to realize that the qualifiers ''maximum allowable'' and ''above which facilities would be subject to the requirement to perform modeling'' might cause confusion vis-à-vis the provisions in §§ 550.303(j) and 550.304(f), which relate to the review of facilities with emissions below the EET. Accordingly, the final rule clarifies that the EETs are specifically applicable in the context of §§ 550.303(e)–(i) and 550.304(b)–(e) of the regulations. In contrast, the use of the EET is not necessary for BOEM to make a determination under §§ 550.303(j) and 550.304(f) as to whether its approval may or may not cause a significant effect to any State.

Commenters raised a question as to why BOEM would establish EETs only in terms of annual emissions, given that many of the NAAQS and SLs, which would have been cross-referenced by the proposed rule, relate only to short-term effects (*e.g.,* 3-hour emissions). BOEM will review EETs for such short-term effects as are warranted once the regional modeling air quality studies are completed and evaluated. Instead of specifying the units (*i.e.,* tons per year) for the EET in the definition of EET, as was proposed, BOEM has decided to specify the units in § 550.303(d) in the final rule, where the EETs are actually set forth. For that reason, BOEM has decided to remove the qualifier ''expressed as short tons per year (tpy)'' from the proposed definition of EET, but retain the reference to tons per year in §§ 550.303(d) and 550.304(b) of the final rule.

Other commenters suggested that BOEM modify the proposed definition of EET so that the definition of EET refers only to criteria air pollutants. BOEM is not making this suggested change since the existing regulations include a formula for VOCs, and the final rule does not change this or change the types of pollutants that the AQRP regulates.

National Ambient Air Quality Standards (NAAQS). BOEM has added a definition of National Ambient Air Quality Standards.

The proposed rule would have defined the term with explicit cross-references to particular USEPA's regulations. Instead, BOEM has provided a definition clarifying what the NAAQS are, and under what statutory authority they are promulgated. BOEM determined that although the NAAQS appear at a number of locations in 40 CFR part 50, it is not difficult for a lessee or operator to find the relevant provisions, and, if they cannot, they can contact BOEM for assistance in locating them. Referencing specific provisions could introduce confusion should USEPA reorganize or renumber their regulations.

Significant Impact Level (SIL). The proposed rule would have defined the term ''Significant Impact Level'' in § 505.302 as an ambient air benchmark or limit that applies to the ambient air impact of the emissions of a criteria air pollutant, as set out in the table in 40 CFR 51.165(b)(2), and would have used SIL in lieu of the existing term ''Significance Level.''

This final rule does not define the term ''Significance Level'' with reference to the USEPA's regulations because BOEM is instead providing a table of the relevant SLs that are to be applied as part of the air quality regulatory program. BOEM is finalizing the rule using the existing term ''Significance Level,'' as it is used in the current regulation, to set the level above which impacts from emissions of criteria air pollutants on a State's air quality would be significant under section 5(a)(8) of OCSLA.

The proposed rule would have replaced the current table setting forth the significance levels (SLs) in 30 CFR 550.303 and 550.304 with a cross-reference to USEPA regulations at 40 CFR 51.165(b)(2). The purpose was to address the disparities between BOEM's table and those presented in that USEPA regulation that have developed over 39 years. To accomplish this, in the final rule, BOEM is updating the table utilizing the values of the SLs in USEPA's regulation to address these disparities. The proposed rule recognized that the USEPA's SLs would not always be appropriate to apply to offshore operations and would have given BOEM the authority to grant a departure to exempt such SL revisions from applying under BOEM regulations. The final rule will avoid the problem by allowing DOI to promulgate updates to the SLs table in the future, with notice and comment as necessary, and to make an independent determination as to which USEPA revisions should be adopted offshore and which should not in accordance with OCSLA's authorities.

Emissions Offset/Existing Facility. In addition to the changes noted above, the definitions of the terms ''emissions offset'' and ''existing facility'' in § 550.302 have been modified in this section to add a reference to DOCD, where the existing regulation definitions refer inconsistently to either an ''Exploration Plan or a Development and Production Plan'' or an ''Exploration Plan or Development and Production Plan.'' This merely clarifies BOEM's existing interpretation that the regulations include DOCDs among the list of plans referenced in these definitions. The proposed rule included language to consistently apply all requirements to EPs, DPPs, and DOCDs.

BOEM did not receive any comments that would be relevant to the changes made to this section of the final rule. BOEM did receive comments pertaining to the proposed provisions that would have added requirements for ''emissions credits'' (which, in the proposed rule, was the term that would have replaced ''emissions offsets''). However, BOEM is not adopting those proposed substantive changes and is instead merely making the clarification regarding DOCDs described above. BOEM has never encountered an instance in which operators have used the existing regulatory provision for emissions offsets. Further, most States' comments highlighted the differences in their onshore programs, and BOEM is not aware of any instance of OCS activities causing significant onshore air quality impacts.

[36] BOEM is not updating the EET formulas at this time. Because the current EET formulas do not directly account for all the criteria pollutants, the formulas would apply to the same pollutants as are found in the existing BOEM regulations.

§ 550.303—Facilities Described in a New or Revised Exploration Plan, Development and Production Plan, or Development Operations Coordination Document

Paragraphs (a)–(c)—New Plans, Applicability of § 550.303 to Existing Facilities, Revised Facilities

The only change made to these paragraphs is to add the phrase ''Development Operations Coordination Document'' after ''Development and Production Plan'' anywhere that the latter phrase is mentioned. BOEM made this change to reflect its long-term practice with respect to these closely related plan documents, for the reasons previously described in the discussion of definitions.

BOEM did not receive any comments that would be relevant to the changes made to these paragraphs of the final rule.

Paragraph (d)—Exemption formulas

We have made a minor clarification to the text of § 550.303(d). In the existing regulations, the first part of paragraph (d) reads:

> To determine whether a facility described in a new, modified, or revised Exploration Plan or Development and Production Plan is exempt from further air quality review, the lessee shall use the highest annual-total amount of emissions from the facility for each air pollutant calculated in § 550.249(a) or § 550.218(a) of this part . . .

The location of the word ''calculated'' in this sentence may cause confusion. The sections to which the sentence applies refer to the amount of emissions generated by a facility for each type of air pollutant, not to the air pollutants themselves. To clarify the meaning, BOEM has reworded the sentence as follows:

> To determine whether a facility described in an initial, modified, supplemental, or revised Exploration Plan, Development and Production Plan, or Development Operations Coordination Document is exempt from further air quality review, the lessee must use the highest annual-total amount of emissions from the facility calculated for each criteria air pollutant, VOC, and TSP listed in § 550.249(a) or § 550.218(a) . . .

Separately, commenters questioned the meaning of the word ''calculated'' in the proposed rule, asking whether BOEM intended this term to mean that the emissions amounts associated with revised or supplemental plans would need to be recalculated every time a lessee or operator revised, modified, or supplemented [37] a plan or whether the original emissions amounts could continue to be used (assuming that no changes to the facility were being proposed that would give cause to alter the original estimates). BOEM did not intend that the proposed rule would have required lessees and operators to recalculate their emissions with every revision of their plan, regardless of whether the proposed changes would affect the amount of air pollution emitted. The regulation at § 550.283(a)(4) specifies that a plan needs to be revised when the lessee or operator proposes to ''[i]ncrease the emissions of an air pollutant to an amount that exceeds the amount specified in your approved EP, DPP, or DOCD.'' Except for the change in the use of the term ''air pollutant'' as previously discussed, § 550.283(a)(4) is unchanged with this final rule; thus, BOEM has retained the original language and intent of the existing regulations (*i.e.,* that an update of the air emissions, and the associated analysis, must be provided only if a proposed plan revision would increase the amount of air emissions released).[38]

We made five additional changes to § 505.303(d), all of which were included in the proposed rule and none of which commenters opposed.

First, the term ''emission exemption threshold'' replaces the term ''emissions exemption amount'' used in the existing regulations.

Second, although the proposed rule suggested replacing TSP with PM_{10} in the existing EET formula for particulates, BOEM has determined that doing so would have the effect of lowering the air quality standards for particulates. Although TSP is a largely-outdated measure of the mass concentration of PM in the air that counts particles up to 100 microns in diameter, for any given facility the emissions of TSP would typically be double those of PM_{10} and roughly four times the volume of $PM_{2.5}$. Thus, if BOEM were to simply substitute PM_{10} for TSP in the EET formula, this would have the effect of potentially allowing a much higher level of emissions to occur under an existing exemption.

TSP includes a broad range of particle sizes, and under windy conditions can be predominantly composed of large wind-blown soil particles of relatively low toxicity. USEPA has determined that PM_{10} and $PM_{2.5}$ are better indicators of particulate health impacts than TSP, and now uses only PM_{10} and $PM_{2.5}$ in formulating SLs and NAAQS for particulates.[39]

This final rule does not add EET formulas specifically for PM_{10} or $PM_{2.5}$ emissions for several reasons. BOEM is just completing and evaluating its modeling studies in the GOMR and in the Alaska OCS Region (AKOCSR) and needs to evaluate the results and potentially follow-up studies to consider whether PM_{10} and $PM_{2.5}$ EET formulas should be considered. In addition, PM_{10} and $PM_{2.5}$ emissions are both components of TSP. For this reason, if the EET for TSP is exceeded, it is likely that the emissions of PM_{10} and $PM_{2.5}$ may also be exceeded, thereby significantly affecting an adjacent State.

This final rule will create a situation where there will be SLs for PM_{10} and $PM_{2.5}$ but not corresponding EETs. However, BOEM has consistently interpreted the existing regulations to require facilities to model for all SLs and NAAQS that might be exceeded when emissions of any air pollutant exceeds an EET. For PM, exceedance of the EET for TSP will require the lessee or operator to model for both PM_{10} and $PM_{2.5}$. In the event that modeling results indicate that the SL for either $PM_{2.5}$ or PM_{10} would be exceeded, a lessee or operator would be expected to undertake appropriate mitigation measures based on the regulations and BOEM's policies. Because BOEM has not replaced the MACI table in § 550.303(g)(2)(i)(A), lessees and operators are required, when exceeding the SLs for PM_{10}, to apply the TSP values in the MACI table to ensure sufficient reduction in impacts in attainment areas.

Third, the final rule in § 550.303(d) explicitly references the DOCD as a covered plan, conforming to BOEM's long-standing practice in reviewing both

[37] The comments were made in reference to proposed rule provision that would have required lessees and operators to resubmit and reevaluate air emissions every 10 years, a provision that BOEM is not finalizing as part of this rule. Although the comments were made in another context, BOEM has determined that it would be beneficial to clarify the meaning of the text to address any confusion arising from the ambiguity of the existing regulation.

[38] In addition to the changes discussed here, BOEM is also changing the word ''shall'' in § 550.303(d) and (e)(1), and (h) and in § 550.304(b) and (c), to ''must,'' and BOEM is changing ''shall'' to ''will'' in §§ 550.303(f) and 550.304(d). These changes merely modernize usage and clarify the meaning of these paragraphs, and they do not change their meaning. BOEM acknowledges that this rulemaking will leave the word ''shall'' in some provisions of Part 550, which are unaffected by this rulemaking, and, while BOEM intends to make similar edits in the future, no implication of differences in meaning should be drawn the use of ''will'' or ''must'' in these amended paragraph, while 'shall' remains in un-amended sections.

[39] See USEPA, *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter,* EPA 452/R–08–004, March 2008, available at *https://www3.epa.gov/ttn/naaqs/standards/pm/data/2008_03_final_integrated_review_plan.pdf.*

DPPs and DOCDs for compliance with these regulations.

Fourth, as proposed, the final rule in § 550.303(d) substitutes the term ''initial'' for the term ''new'' in reference to plans. Any time a lessee or operator proposes a new facility, BOEM must review it for compliance with the AQRP. The term ''initial'' in reference to a plan reflects the reality that a lessee or operator may update a plan to add an additional facility. Under those circumstances, even though BOEM would not consider the plan to be a new plan, it would still be the first (*i.e.,* initial) plan for the additional facility and would therefore be subject to the requirement for an air quality review. In addition, lessees or operators may submit supplemental plans, so BOEM added the term ''supplemental'' to the types of plan submissions requiring review.

Fifth, the final rule in § 550.303(d) replaces the phrase ''for each air pollutant'' with the phrase ''for each criteria air pollutant, VOC, and TSP'' to align with the change in the definitions in § 550.105, using the term ''criteria air pollutant'' instead of ''air pollutant,'' and to address the fact that this final rule will retain existing EETs for criteria air pollutants,[40] VOCs, and TSP.

For the reasons discussed above in the context of § 550.218, this final rule is not adopting the proposed changes regarding MSC, and, accordingly, § 550.303(d), like the rest of §§ 550.303 and 550.304, will continue to refer to a facility's emissions and not, as proposed, ''projected emissions'' more broadly.[41] While BOEM has traditionally maintained that the proposed framework for attributing MSC emissions was permissible under section 5(a)(8) of OCSLA, the Solicitor's Office has pointed out that the Secretary's statutory authority under OCSLA is distinct from that of the USEPA under the CAA. OCSLA does not require considering attributed emissions from vessels in order to determine modeling and control obligations. Moreover, the practical considerations discussed above weigh against doing so.

Because of the manner in which the USEPA defines criteria pollutants, it is sometimes unclear under what circumstances they refer to nitrogen oxides (NO_X) generally and under what circumstances they refer to nitrogen dioxide (NO_2) in particular. With respect to the table of SLs, BOEM has continued its longstanding practice of utilizing NO_2 as an indicator pollutant for NO_X, consistent with the practice of the USEPA. The use of NO_2 as an indicator of NO_X is conservative, and is consistent with BOEM's approach of requiring operators to report emissions based on the maximum potential emissions from their equipment.

BOEM did not receive any other comments that would be relevant to the changes made to this paragraph of the final rule.

Paragraph (e)(1)—Significance Levels

The proposed rule would have replaced the table of SLs from the existing regulations at §§ 550.303(e) and 550.304(c) with a cross-reference to the corresponding USEPA regulations. Instead, BOEM has updated the table to reflect those SLs that are currently identified in the regulations of the USEPA at 40 CFR 51.165(b)(2). By using this table, BOEM provides lessees and operators with a simple consolidated listing of the relevant SLs values, organized by air pollutant and averaging time. Rather than including a cross-reference to the USEPA tables, BOEM believes that it would be better for BOEM to make a determination about the appropriateness of applying future changes to USEPA's SLs to the OCS. The SLs in this regulation may not always be identical to those of the USEPA SLs for that reason. The proposed rule implicitly recognized this because it would have added a provision to the regulations to allow BOEM to issue exceptions to those SLs that BOEM determined would not be relevant. Rather than including a cross-reference to a USEPA table and then providing a list of exceptions, BOEM has determined that it would be more appropriate to produce DOI's own table of relevant SLs. That way, BOEM can update the SLs table in the future, whenever it is appropriate to do so, whether to accommodate any changes in the SLs that are made by the USEPA in 40 CFR 51.165(b)(2) or for some other reason.

Paragraph (e) in the existing regulations lists the SLs to use in modeling if a proposed plan has projected emissions in excess of an EET. DOI adopted the USEPA's SLs in the existing regulations as they existed in 1980. However, the USEPA has updated the SLs since then and the SLs in the existing regulations can be updated. This final rule updates the table of SLs in the existing regulations with the USEPA's current values.

The existing regulations at § 550.303(e) provide that for a facility not exempt under paragraph (d) for air pollutants other than VOC, the lessee shall use an approved air quality model to determine whether the projected emissions of those air pollutants from the facility result in an onshore ambient air concentration above the significance levels set out in paragraph (e).

The proposed rule would have addressed this modeling requirement as stated above through a revised proposed § 550.303(f), which would have required that if your projected emissions or complex total emissions of the precursor or criteria air pollutant exceed the applicable emissions exemption threshold, then further review and/or controls are required, in accordance with:

(1) If the exceedance is for VOCs, you must control your emissions of VOCs in accordance with § 550.306, for a short-term facility, or § 550.307, for a long-term facility.

(2) If the exceedance is for any criteria air pollutant, then you must conduct modeling in accordance with § 550.304.

This final rule retains the existing definition in § 550.303(e), except for referring to ''criteria air pollutants'' rather than to ''air pollutants other than VOC'' and referring to the updated SLs table, consistent with changes elsewhere in this final rule. Section 550.303(e) will now provide that for a facility not exempt under paragraph (d), the lessee must use a BOEM approved air quality model to determine whether projected emissions of criteria air pollutants from the facility result in an onshore ambient air concentration above any SL set forth in the table in paragraph (e).

The proposed rule would have changed BOEM's interpretation of the word ''State'' in the statutory phrase ''significantly affect the air quality of any State.'' Specifically, the proposed rule would have defined ''State'' to include submerged lands adjacent to the State shoreline to the State seaward boundary, changed the distance term in the emission exemption formulas, and required that non-exempt plans provide modeling results, which would include air quality effects over offshore State submerged lands in addition to onshore effects. This final rule leaves in place the current and long-standing approach, as reflected in the existing regulations, of evaluating impacts to the air quality of a State at its shoreline.

Some commenters objected to the proposal to use the State seaward boundary, pointing to OCSLA legislative history that they assert would support congressional intent to protect onshore air quality—not to regulate offshore air quality. Commenters also raised practical difficulties with the proposed

[40] The existing regulations do not have EET formulas for PM_{10}, $PM_{2.5}$, lead, or ozone. This final rule will not add EETs for any pollutants.

[41] This was one feature of proposed § 550.205. In the existing regulations, information on vessel emissions is dealt with in §§ 550.224 and 550.257.

change, pointing out that because the seaward boundary of Texas is much farther offshore than other producing Gulf States, a facility off the coast of Texas would have a lower exemption amount than one the same distance off the coast of Louisiana. They also maintained that the proposal to require modeling of impacts over State submerged lands would be difficult due to the lack of offshore monitoring stations and information about background pollutant concentrations. Other commenters, however, expressed general support for extending consideration of impacts to the State seaward boundary, and one commenter argued that evaluating impacts over the entirety of a State (including offshore submerged lands) was required by section 5(a)(8) of OCSLA.

While the term ''State,'' read in isolation from its context in the statutory phrase ''significantly affect the air quality of any State'' could be interpreted to include offshore submerged lands of the State, the context and purpose reflected in the legislative history demonstrates congressional focus on the health effects on the onshore population.

The goal expressed in the first clause of section 5(a)(8) of OCSLA is to ensure compliance with the NAAQS, and the NAAQS have historically been established based on an evaluation of impacts to onshore populations and resources. See *e.g.,* USEPA, Integrated Science Assessment for Particulate Matter, Second External Review Draft, July 2009.

Also, the existing regulations, which consider onshore impacts on a State's air quality, more closely matches the intent of Congress as expressed in the Conference Committee report to the 1978 OCLSA amendments. In two separate passages, that report describes the application of the regulations prescribed by section 5(a)(8) as focusing on effects to ''adjacent onshore areas'' and not impacts over offshore submerged lands. S. Rep. 95–1091, at pp. 85–86 (1978).

Moreover, two practical considerations support a decision not to adopt this aspect of the proposed rule. First, BOEM is in the process of completing its study of the EET formulas, so any changes to the distance term in the formulas would be premature. Second, the lack of monitoring stations offshore and the resulting lack of data about background concentrations would make determinations about the offshore impacts of a facility's emissions uncertain. For all these reasons, BOEM is not adopting the proposed changes interpreting ''State'' to include submerged lands out to the State seaward boundary, and thus leaves in place this aspect of the existing regulation.

The proposed rule contained a provision that would have authorized the deferral or waiver of new SILs in order to avoid adding new USEPA designated SILs that might not be relevant to OCS operations. Because BOEM has instead elected to update the SLs table with a new table containing the USEPA SLs currently found in 40 CFR 51.165(b)(2), that provision is no longer necessary and has not been included in this final rulemaking.

The final rule also makes clarifying edits that eliminate the use of the existing phrase ''any air pollutant other than VOC'' in § 505.303(e). This particular change does not affect the meaning of the existing provision and reflects the deletion of the defined term ''air pollutant'' discussed earlier.

Paragraph (e)(2)—Significance Levels

This provision is being added to clarify that, in the event that the EET for TSP is exceeded, air quality modeling will be required not of TSP but instead of PM_{10} and $PM_{2.5}$.[42] In the event that that modeling determines that an SL for $PM_{2.5}$ or PM_{10} is exceeded in any State, this would be interpreted by BOEM to indicate that the incremental amount of the criteria air pollutant ''significantly affects the air quality of a State.'' This final rule replaces the values for the SLs of TSP with new SLs for PM_{10} and $PM_{2.5}$. Going forward, the SLs table will no longer contain any values for TSP. The SLs for PM_{10} and $PM_{2.5}$, which are criteria air pollutants, are a more appropriate basis for evaluating PM pollution and must be used for any air quality modeling, as well as for evaluating the effectiveness of any mitigation or controls that may be used.

Paragraph (f)—Significance Determinations

Based on the comments received in response to the proposed rule, there may be situations in which emissions do not result in an exceedance of the SLs but the area does not comply with the NAAQS. However, the existing regulations provide a way of addressing such situations should they arise. First, existing § 550.303(g)(2)(i)(B) already provides that, in a situation where an operator has exceeded the EETs and must submit modeling information, the modeled concentration of an air pollutant cannot exceed the NAAQS (as described below this provision is being changed by replacing ''air pollutant'' with ''criteria air pollutant''). Second, because the States can oppose an OCS plan, both under the existing air quality regulations and under the Coastal Zone Management Act's consistency certification process, there are existing mechanisms for triggering review of proposed decisions to approve plans when there is an exceedance of the NAAQS.

In the existing regulations, this paragraph sets the criteria for what BOEM means by the word ''significant'' in the context of the OCSLA mandate ''for compliance with the national ambient air quality standards pursuant to the CAA (42 U.S.C. 7401 *et seq.*), to the extent that activities authorized under [OCSLA] significantly affect the air quality of any State.'' Although BOEM received many comments, particularly from industry, to the effect that BOEM's historical environmental analyses had previously concluded that air pollutant emissions associated with OCS activities have not had a significant effect on the air quality of the States, these comments did not relate to the standard established for significance in the air quality regulations. BOEM's policy of using the SLs to define significance has been in place since the beginning of DOI's AQRP and BOEM did not propose to change this policy as part of the proposed air quality rule. Although BOEM has been consistent in following this policy, paragraph (e) of this section is now being updated with the USEPA SLs currently found at 40 CFR 51.165(b)(2).

The phrase ''air pollutant other than VOC'' is replaced with the newly defined term ''criteria air pollutant.'' Finally, the term ''air pollutant'' has been replaced with ''criteria air pollutant'' in the two additional places where the term is used in the paragraph, consistent with similar changes and rationale given elsewhere in this final rule. As was noted in the proposed rule, the existing regulations do not use the terms ''air pollutant'' and ''criteria air pollutant'' consistently throughout. This final rule ensures that every term is used properly and consistently and appropriate changes to the usage of these terms were made wherever necessary.

As is the case with paragraph (d) of this section, this final rule is not adopting the proposed changes regarding MSC.

[42] Air quality modeling of TSP may still be required in limited cases if the SLs for PM are exceeded and the analysis of the MACI becomes necessary (since the MACI table retains TSP in 30 CFR 503.303(g)(2)(i)(A)).

Paragraph (f)(1)—Significance Determinations

The terms ''air pollutant other than VOC'' and ''air pollutant'' have been replaced with ''criteria air pollutant'' in those places in this paragraph where these terms were used.

Paragraph (f)(2)—Significance Determinations

This paragraph was revised for clarity but without making any substantive change in the meaning of the text. The paragraph in the existing regulations was changed from providing that the projected emissions of VOC from any facility which is not exempt under paragraph (d) for that air pollutant shall be deemed to significantly affect the air quality of the onshore area for VOC to providing that the projected emissions of VOC from any facility which is not exempt under paragraph (d) will be deemed to significantly affect the air quality of the onshore area for VOC.[43]

Paragraphs (g)(1) and (2)

The only change made to these paragraphs was to replace the reference to ''air pollutant other than VOC'' with ''criteria air pollutant.'' This change conforms this paragraph with similar changes made throughout subpart C and discussed previously.

Paragraph (g)(2)(i)(A)

The proposed rule would have replaced the MACI table with a cross-reference to the USEPA's table of Ambient Air Increments. This final rule does not implement that change.

The regulations employ the table of MACIs in this paragraph as a criterion for determining whether required controls are sufficient for facilities that significantly affect attainment areas (*i.e.,* areas that are in compliance with the NAAQS). The concept of MACI in the AQRP originally came from the USEPA's Prevention of Significant Deterioration (PSD) program. The USEPA's PSD program is designed primarily to prevent the air quality in an attainment area from deteriorating substantially from a prior baseline. The statutory requirements for the PSD program are described in detail in the CAA, but OCSLA contains no reference to preventing deterioration within attainment areas.

BOEM has only rarely had to apply the MACI table in an evaluation of any plan. Because of this, it is not clear that the existing MACI table is necessary or relevant to evaluate emissions from OCS facilities. Furthermore, it is unclear whether emissions from OCS facilities cumulatively cause significant degradation in State air quality in attainment areas, particularly with respect to SO_X and TSP, the two pollutants which are referenced in the MACI table. Until BOEM makes such a determination, BOEM does not intend to update this table. Once BOEM has more information about potential updates to other aspects of the regulation, it may decide to make changes to this table.

Paragraph (g)(2)(i)(B)

The only change made to this paragraph was to replace the reference to ''air pollutant other than VOC'' with ''criteria air pollutant.'' This change conforms this paragraph with similar changes made throughout Subpart C and discussed previously.

For the reasons described previously, BOEM has determined that it would be best not to implement a formal cross-reference to the USEPA's regulations setting out the NAAQS as in the proposed rule.

Instead, BOEM has added a definition of the term ''NAAQS'' that refers to the statutory authority for establishing NAAQS to the list of definitions.

Paragraph (h)—Controls Required on Temporary Facilities

Consistent with a similar change made in other places throughout this final rule, BOEM is replacing the term ''air pollutant'' with the term ''criteria air pollutant or VOC.'' The existing text of § 550.303(h) provides that the lessee shall apply BACT to reduce projected emissions of any air pollutant from a temporary facility which significantly affects the air quality of an onshore area of a State.

With this change, the text of § 505.303(h) will provide that the lessee must apply BACT to reduce projected emissions of any criteria air pollutant or VOC from a temporary facility that significantly affect the air quality of an onshore area of a State.

The existing rule establishes what a significant impact would be for both criteria pollutants and VOCs, and it would be incongruous for this provision to apply to criteria pollutants, but not VOCs. This change in terminology is consistent with the proposed rule, which proposed to consistently use the terms criteria air pollutant and air pollutant.

Paragraph (j)—Review of Facilities With Emissions Below the Exemption Amount

The proposed rule contained provisions requiring the aggregation of emissions across multiple facilities and facilities covered by multiple plans. Comments submitted in response to the proposed rule raised many concerns about the practicality and implications of such consolidation. The major concern expressed was the fact that adding nearby facilities could thereby implicate other facilities in the vicinity of those added and those facilities could, in turn, be located nearby other facilities, and so forth. Thus, the requirement to consolidate emissions across multiple nearby facilities could lead to a ''chain reaction'' that would potentially be unbounded or, at the least, be very confusing to operators. Aside from that, the practicalities of getting emissions data from competing companies would make it very difficult for operators to comply with these proposed requirements. BOEM agrees that these are valid concerns and has elected not to finalize that proposal. The final rule retains the existing paragraph (j) under which the regional supervisor may require the consolidation of emissions reporting from multiple facilities if, in his or her determination, such emissions would cause a significant effect to any State.

Consistent with the proposed rule's terminology, the final rule replaces the term ''exemption amount'' with the phrase ''emission exemption threshold.''

Consistent with the changes made elsewhere in this rule, the reference to ''Exploration Plan or Development and Production Plan'' is replaced by ''Exploration Plan, Development and Production Plan, or Development Operations Coordination Document.''

§ 550.304—Existing Facilities

Section 550.303 refers to plans for new facilities or to those that are described in a plan that was approved after 1980, and § 550.304 refers to facilities that are described in a plan approved before 1980. The proposed rule would have eliminated this distinction and established one set of requirements for all plans. Because the final rule is more limited in scope than the proposed rule, BOEM has retained § 550.304 and has made changes to § 550.304 that conform to those changes made in the corresponding parts of § 550.303.

Although the vast majority of plans related to facilities still in operation post-date 1980, public comments received from industry did indicate that

[43] When the VOC EET is exceeded then, under § 550.303(f)(2), the projected emissions are deemed to significantly affect a state. This treatment of VOCs is different from the treatment of the other pollutants in the regulations, for which the determination whether emissions will significantly affect a state is based on their modeled impacts within the onshore area of a state. This distinction is part of the reason that BOEM consistently refers to criteria pollutants and VOCs separately.

there are still a small number of offshore facilities that were approved under a plan that pre-dated 1980. If such a facility were to emit pollutants in sufficient amounts so as to significantly affect the air quality of any State, BOEM could utilize OCSLA's existing authority to require that appropriate action be taken to mitigate these emissions. For these reasons, BOEM has determined that leaving the existing § 550.304 as amended would be more appropriate than either substantially revising or deleting it.

Paragraph (b)—Exemption Formulas

The changes made to this paragraph are analogous to those made in § 550.303(d), as noted above.

Paragraph (c)—Significance Levels

The primary change made to this paragraph is to replace the existing table with a cross-reference to the new BOEM table of SLs in § 550.303(e).

Just as in § 550.303(e), the final rule also makes clarifying edits that eliminate the use of the existing phrase ''any air pollutant other than VOC'' in this paragraph. This particular change does not affect the meaning of the existing provision and reflects the deletion of the defined term ''air pollutant'' discussed earlier. Also, consistent with the change made to § 550.303(e), the changes to this paragraph clarify that, in the event that the EET for TSP is exceeded, air quality modeling for SLs will be required, not of TSP, but instead of PM_{10} and $PM_{2.5}$. The values for the SLs of TSP are being replaced with new SLs for PM_{10} and $PM_{2.5}$. Going forward, the SLs table will no longer contain any values for TSP. The SLs for PM_{10} and $PM_{2.5}$, which are criteria air pollutants, are a more appropriate basis for evaluating PM pollution and must be used for any air quality modeling, as well as for evaluating the effectiveness of any mitigation or controls that may be used.

BOEM did not receive any comments that would be relevant to the changes made in this paragraph of the final rule.

Paragraph (d)—Significance Determinations

Under the existing regulations, § 550.304(d) describes what constitutes ''significant emissions'' with respect to the OCSLA requirement that OCS operations must not ''significantly affect the air quality of any State.'' Facilities that pre-date the 1980 adoption of the regulations are subject to the requirements of this section. The text of this paragraph is unchanged with three exceptions. First, in paragraph (d)(1), the new text uses the acronym SL for the term ''significance level,'' consistent with a similar change made elsewhere in this rule; however, this change has no effect on the substance of these regulations. Moreover, consistent with adding the definition of ''criteria air pollutant'' to the regulations, this final rule removes the phrase ''for that air pollutant'' in paragraph (d). Finally, BOEM is modifying paragraph (d)(2) to delete the term ''air pollutant.'' The paragraph does not deal with any air pollutant other than VOCs and the use of the term ''air pollutant'' is needlessly confusing. This change does not affect the meaning of the provision.

BOEM did not receive any comments that would be relevant to the changes made to this paragraph of the final rule.

Paragraph (e)—Controls Required

Consistent with a similar change made in other places throughout this final rule, BOEM is replacing the term ''air pollutant'' in § 550.304(e)(1) with the term ''criteria air pollutant or VOC.'' The existing text of § 550.304(e)(1) provides that the projected emissions of any air pollutant which significantly affect the air quality of an onshore area shall be reduced through the application of BACT.

With this change, the text of this paragraph will provide that the projected emissions of any criteria air pollutant or VOC that significantly affect the air quality of an onshore area must be reduced through the application of BACT.

This change does not change the meaning of the provision and mirrors the change made to paragraph (h). BOEM is making it for the same reasons as for the change in that paragraph.

BOEM did not receive any comments that would be relevant to the changes made to this paragraph of the final rule.

Paragraph (f)—Review of Facilities With Emissions Below the Exemption Amount

Consistent with the terminology in the proposed rule, the final rule changes the term ''exemption amount'' to ''emissions exemption threshold'' to correspond to the use of this term elsewhere in the final rule.

BOEM did not receive any comments that would be relevant to the changes made to this paragraph of the final rule.

V. Key Statutes and Executive Orders

A. Key Statutes

1. Congressional Review Act

Pursuant to the Congressional Review Act 5 U.S.C. 801 *et seq.,* the Office of Information and Regulatory Affairs (OIRA) of the OMB has determined that this rulemaking is not a major rulemaking, as defined by 5 U.S.C. 804(2), because this rulemaking has not and is unlikely to result in:

- An annual effect on the economy of $100,000,000 or more;
- a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

2. Data Quality Act

In developing this rule, BOEM did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C, sec. 515, 114 Stat. 2763, 2763A–153–154). BOEM received one comment relevant to the Data Quality Act, also known as the Information Quality Act (IQA). The commenter asserted that the draft Environmental Assessment (EA) under NEPA seems to be subject to the IQA and, therefore, should have been made available to the public to aid comment. However, contrary to the commenter's assertion, the draft EA is not subject to the IQA. In any case, BOEM did make the draft EA publicly available for review and public input during the proposed rulemaking by placing that document in the public docket along with the proposed rule.

3. National Environmental Policy Act

BOEM has developed a final EA and made a finding that this final rule does not have a significant impact on the quality of the human environment under the NEPA. The final EA and Finding of No Significant Impacts (FONSI) are available for review in conjunction with this final rule at *www.regulations.gov* (in the Search box, enter BOEM–2018–0038).

4. Paperwork Reduction Act (PRA)

The PRA (44 U.S.C. 3501–3521) provides that 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 is approved by OMB and it displays a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency (44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k)). This final rule contains a collection of information that BOEM submitted to

OMB for review and approval under the PRA. This PRA section of the final rule relates to the OMB control numbers associated with information collection under 30 CFR part 550, subparts B and C. The proposed rule, soliciting comments on the collections of information for 60 days, was published in the **Federal Register** on April 5, 2016 (81 FR 32259). BOEM received ten comments on the collections of information. Commenters raised a number of issues specific to individual collections of information and estimated costs associated with the proposal. Although BOEM made certain changes related to information collection in the final rule, it did not do so directly in response to the comments received.

This final rule retains most of the text of the existing regulations while making only a small number of the changes originally proposed. The proposed rule changes were far greater than those implemented in this final rule. BOEM has determined that the changes in the final rule are necessary to update outdated standards and benchmarks. The changes related to collection of information include:

- Updating the table of SLs in the existing regulations, dating from 1980, with current SLs at 40 CFR 51.165(b)(2). Annual burden hours will not be significantly impacted.
- Updating the data collection requirements from the existing regulations, dating from 1980, with a statement requiring operators to provide TSP data in subpart B in §§ 550.218 and 550.249. This requirement was implied by the necessity to apply TSP estimates to the EET formulas in subpart C, §§ 550.303 and 550.304; however, the requirement to actually collect the data analyzed in subpart C was not previously mentioned as a requirement in subpart B. Annual burden hours will not be significantly impacted.
- Although BOEM has not replaced the EET formula for TSP with an identical formula for PM_{10}, as suggested in the proposed rule, BOEM has replaced TSP with two categories of criteria air pollutants, PM_{10} and $PM_{2.5}$ in the table of SLs as part of this final rule. This change will provide more clarity to OCS lessees and operators, but will not impact annual burden hours.
- BOEM updated the paragraph that refers to the EETs to clarify that the formulas apply to both DPPs and DOCDs. This update will not change current practice because the air quality regulations have always applied to DPPs and DOCDs, and the spreadsheets are already set up for both DPPs and DOCDs. BOEM's spreadsheets automatically calculate the formulas. This clarification will not increase annual burden hours.
- BOEM is updating the spreadsheets so that emissions from transiting support vessels will no longer be considered as part of the EET evaluation. The rule is not, however, changing the requirement that emissions from vessels temporarily attached either to the seabed or to another facility must be accounted for as part of the EET evaluation process. This means that some sources may fall under the definition of ''facility'' depending on their function (*i.e.,* a vessel transiting to and from a facility would need to report the associated emissions, but those emissions would not be added in with the facility emissions for the purpose of the EET analysis; however, emissions generated from the same vessel during workover operations would be added in with the facility emissions). In some cases, therefore, emissions from the same source may need to be separately reported to account for the different functions (*e.g.,* transiting versus well operations) that they intend to perform.

Title of Collection: Air Quality Control, Reporting, and Compliance.

OMB Control Number: Information Collection burdens associated with 30 CFR part 550, subpart A, are approved under OMB Control Number 1010–0114 (30, 635 annual burden hours, $165,492 non-hour costs; expires January 31, 2020). Information Collection burdens associated with 30 CFR part 550, subpart B, are approved under OMB Control No. 1010–0151, Plans and Information (436,438 annual burden hours; $3,939,435 non-hour costs; expires June 30, 2021). Information Collection burdens associated with 30 CFR part 550, subpart C, are approved under OMB Control No. 1010–0057 (35,200 annual burden hours; $0 non-hour costs; expires May 31, 2021).

This rule does not add new information collection requirements or change the burden estimates. However, BOEM is submitting OMB control number 1010–0151 for revisions with publication of the final rule. The final rule will modify two forms, BOEM–0138 and BOEM–0139.

Form Number:

- BOEM–0137, OCS Plan Information Form
- BOEM–0138, EP Air Quality Screening Checklist
- BOEM–0139, DOCD/DPP Air Quality Screening Checklist
- BOEM–0141, ROV Survey Report
- BOEM–0142, Environmental Impact Analysis Worksheet

Type of Review: Revision of a currently approved information collection.

Respondents/Affected Public: Respondents are Federal oil and gas or sulfur lessees or operators.

Total Estimated Number of Annual Response: 4,266 response.

Total Estimated Number of Annual Burden Hours: 436,438 hours.

Respondent's Obligation: Some responses to the information collection are required to obtain or retain a benefit, and some are mandatory.

Frequency of Collection: The frequency of the response varies, but primarily responses are required only on occasion.

Total Estimated Annual Nonhour Burden Cost: $3,939,435.

BOEM is updating the air quality spreadsheets, BOEM–0138 (EP Air Quality Screening Checklist) and BOEM–1039 (DOCD/DPP Air Quality Screening Checklist), in response to this final rule. BOEM intends for these forms to be comprehensive and to meet the needs of different lessees and operators. BOEM uses the data from these forms to determine the effect of the air emissions on the environment. These forms aim to provide a way for the designated operator to document the emissions sources and facilitate the calculation of emissions, which BOEM evaluates against the EETs. As recommended in and submitted to OMB in the proposed rulemaking, the new spreadsheets would split the PM data into two categories, PM_{10} and $PM_{2.5}$ and would clarify that the reporting requirement for PM would include both filterable and condensable PM, in accordance with USEPA guidelines.

The proposed rulemaking also included reporting requirements for lead and ammonia and BOEM proposed corresponding changes to those forms. Lead is a criteria air pollutant and has a defined NAAQS. For that reason, information on lead emissions will still be required with this final rule.

BOEM is not adding any reporting requirement for ammonia in this final rule. Instead, BOEM will modify the spreadsheets so that they calculate and display ammonia emissions along with the list of other pollutants reported. This latter change would impose no additional burdens on operators since the spreadsheets will use the activity data already being provided by operators to calculate that amount of ammonia that would be generated by any given plan. BOEM will use this information about ammonia to inform potential future policy making.

In addition to changing the data collection to accommodate different types of pollutants, BOEM will also update these forms as discussed in the proposed rule to reflect the addition of

unique emissions sources that are applicable to Alaska. In the past, BOEM's air quality spreadsheets could not be used in the Alaska region because they did not encompass the unique types of equipment that were necessary to properly evaluate emissions from Alaskan operations.

With the publication of this final rule, BOEM submitted the updated forms, BOEM–0138 and BOEM–0139, to OMB for approval under OMB Control Number 1010–0151. Once OMB approves OMB Control Number 1010–0151, BOEM will publish the updated forms on the BOEM OCS Operation Forms website at: *https://www.boem.gov/BOEM-OCS-Operation-Forms/.*

As part of our continuing effort to reduce paperwork and respondent burdens, BOEM invites the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

The collection of information does not include questions of a sensitive nature. BOEM protects proprietary information according to section 26 of OCSLA; the Freedom of Information Act (5 U.S.C. 522), the DOI's implementing regulations at 43 CFR part 2; and the regulations at 30 CFR 550.197, Data and information to be made available to the public or for limited inspection, and 30 CFR 556.104, Information collection and proprietary information.

Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Information Collections Clearance Officer, Office of Policy, Regulation, and Analysis; Bureau of Ocean Energy Management; U.S. Department of the Interior; VAM–BOEM DIR; 45600 Woodland Road, Sterling, VA 20166; or by email to *anna.atkinson@boem.gov.* Please reference Air Quality Control, Reporting, and Compliance (Final Rulemaking) in your comments.

5. Impact of This Final Rule on Small Entities, Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–612, requires agencies to analyze the economic impact of regulations when a significant economic impact on a substantial number of small entities is likely. If the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, then this analysis is not required.

As defined by the Small Business Administration (SBA), a small entity is one that is ''independently owned and operated and which is not dominant in its field of operation.'' What characterizes a small business varies from industry to industry in order to properly reflect industry size differences. This final rule will affect lease operators that are conducting OCS exploration and development operations in the Gulf of Mexico and adjacent to the North Slope Borough of Alaska. BOEM's analysis shows this could include about 70 companies with active operations. Of the 70 companies, 21 (~30 percent) are large and 49 (~70 percent) are small. Entities that will operate under this rule primarily fall under the SBA's North American Industry Classification System (NAICS) codes 211120 (Crude Petroleum Extraction) and 211130 (Natural Gas Extraction). For NAICS classifications 211120 and 211130, SBA defines a small business as one with fewer than 1,251 employees.

BOEM's analysis shows that there are 49 small companies with active operations on the OCS, and all of these companies would be impacted by the rule if they engage in activities that require an air quality review. Most of these entities are likely to engage in such activities (*i.e.,* exploration and/or development of offshore mineral resources). BOEM has determined that this final rule will affect a substantial number of small entities. However, as the rule does not increase costs compared to the baseline, it will not impose additional costs on small entities.

The regulatory changes in this final rule are technical corrections or reflect updates to the list of USEPA criteria pollutants, primary and secondary NAAQS, and their relevant SL values. Because operators have already been designing their plans based upon USEPA's updated NAAQS, BOEM does not anticipate that these definitional and technical updates will have a significant impact on operators. Other changes are definitional or intended to confirm and codify existing policies or procedures. There will not be an increase in compliance burdens as a result of this rule because this final air quality rule does not impose new information reporting or air quality modeling requirements, it does not change any requirements for air quality monitoring on the part of lessees or operators, and it does not implement the proposed requirements for additional emissions reductions measures. The regulatory updates will not add paperwork or other burdens to small or other entities operating in OCS areas under BOEM's air quality jurisdiction. None of these changes increase or decrease the burden on small or other entities operating on the OCS. The effect of this final rule is simply to clarify requirements and update BOEM regulations to reflect current practice; therefore, BOEM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

6. Small Business Regulatory Enforcement Fairness Act

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

(a) Will not have an annual effect on the economy of $100 million or more;

(b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

7. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

B. Executive Orders

1. Governmental Actions and Interference With Constitutionally Protected Property Rights (E.O. 12630)

This rule does not affect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

2. Regulatory Planning and Review (E.O. 12866)

E.O. 12866 provides that the OIRA will review all significant rules. The proposed rule was deemed significant both because of its potentially substantial economic impact and because it raised certain issues that could have significant policy implications. Although, the scope of this final rule is much more limited than the proposed rule, OMB has nevertheless determined that this rule should be classified as significant because of the overall importance of air quality to the potentially affected States and the potential implications of the proposed rule on the oil and gas industry. The rule is considered significant for policy reasons, not for economic reasons, however, because the final rule would not cause a substantial impact to either the regulated entities or any other potentially affected parties. Unlike the proposed rule, as compared to the current AQRP, this rule would impose no additional burdens or costs and would likely cause a minor reduction in such burdens and costs.

BOEM has compared the costs and benefits of the provisions in this final rule to the baseline scenario. The baseline scenario represents BOEM's best assessment of what U.S. OCS operations would be like absent this regulatory action. The baseline includes compliance with existing BOEM regulations and current established procedures for the Department of the Interior's (DOI) administered air-quality jurisdiction in the Gulf of Mexico (GOM) and adjacent to the North Slope Borough of Alaska.

In comments on the proposed rule, industry stakeholders asserted that BOEM's proposed rule cost estimates were significantly underestimated. These same stakeholders also asserted that BOEM's benefits were over-stated since the emissions reductions were unlikely to occur. BOEM evaluated the comments and information provided by the commenters and concurs that the compliance costs in the proposed rule's regulatory impact analysis were underestimated and the benefits were overestimated.

This final rule will result in no changes to compliance burdens and no change in benefits compared to BOEM's existing regulations and practices. The major change in this final rule with respect to the SLs is the deletion of annual and 24-hour averaging times for TSP and the insertion of annual and 24-hour averaging times for both PM_{10} and $PM_{2.5}$. Although the final rule requires the use of updated USEPA SLs, BOEM's practice over the past several years has been to review plans it has received against these same SLs. Accordingly, BOEM has determined that using the updated SLs will not cause any increase in costs compared to the baseline.

BOEM is seeking approval from OMB for changes to the air quality spreadsheets necessitated by this rule. These include adding columns to allow separate reporting of $PM_{2.5}$ and PM_{10}, as well as lead.[44] None of these changes would impose any additional costs on operators because current BOEM practice is to have BOEM's spreadsheets perform the emissions calculations based on an inventory of the types of equipment and activity levels provided by the operators. There is no change that will be required of operators as a result of this rule because BOEM will update all the necessary data in the spreadsheets so that the new information required by this rule will be calculated automatically for the operator. Because the EET for TSP has never been exceeded, and also because the EET for TSP is not being updated with this rulemaking, it is likely that the change to the SLs will not have any effect on the mitigation that BOEM requires of operators.

This final rule updates BOEM's existing requirements, but does not add any new procedures to the air quality review program, nor does it add any reporting requirements. It does not add any incremental burden to industry to meet the criteria BOEM uses to review plans nor does it change what lessees and operators must do to ensure compliance with OCSLA. The plan requirements, operating requirements, and compliance and monitoring requirements of BOEM's regulations remain unchanged. This final air quality rule does not impose any new air quality modeling requirements, it does not require any new air quality monitoring on the part of lessees or operators, and it does not implement any additional emissions reductions measures.

None of the regulatory changes in this final rule increase or decrease the regulatory burden compared to current practice. BOEM does not expect any changes in OCS air quality emissions resulting from this rule; the air pollution reductions that BOEM estimated may have been caused by the proposed rule may or may not occur.

In accordance with the existing regulations, EPs, DPPs or DOCDs submitted by lessees and operators must show whether regulated air pollutant emissions are below the exemption threshold or below the SLs in order to avoid applying controls.[45] If a plan's maximum estimated emissions are below the exemption threshold, no additional modeling or controls is required. According to both the existing regulations and this final rule, if the maximum emissions estimated for a proposed plan are above the exemption threshold, lessees must model emissions to determine if the plan's emissions will remain below the SLs. If the plan's emissions exceed an SL, then, under both the existing regulations (baseline) and this final rule, BOEM requires lessees and operators to implement BACT to reduce the proposed facility's air quality impact on the State.

Congress transferred air quality jurisdiction for the OCS adjacent to the North Slope Borough of Alaska to DOI in December 2011. Potential minor differences in practice between the GOMR and AKOCSR in implementing the air quality regulations do not result in material compliance differences. Practical differences are minor and the sheer quantity of GOM EPs and DOCDs dwarf the one or two plans BOEM expects to receive each year in the AKOCSR.

This final rule retains most of the existing air quality regulations and makes only minor changes, as discussed above. These changes are primarily updates to outdated air quality standards and benchmarks. BOEM is updating the table of SLs in the existing regulations, dating from 1980, with the values currently found in the USEPA table at 40 CFR 51.165(b)(2). Other changes are mostly to clarify terminology.

BOEM believes that this rule is deregulatory in nature, both because it replaces onerous provisions of the proposed rule with provisions that are much simpler and because it corrects a number of inconsistencies and inaccuracies in the existing regulations in such a manner as to reduce the complexity of the regulatory process. BOEM does not expect any changes in OCS air quality resulting from this rule.

[44] Although the new rule is not adding any new EET or SL for lead, because §§ 550.218 and 550.249 now refer to ''criteria air pollutants,'' BOEM is adding a separate column to report lead. As with other pollutants, when the operator enters activity information (*e.g.* fuel usage and duration) the lead emissions would be automatically calculated and populated into the spreadsheet based upon an emissions factor embedded in the spreadsheet.

[45] There is an exception to this noted in current 30 CFR 550.303(j). If BOEM determines that a proposed plan would result in one or more facilities to be installed that could generate a level of pollution that would exceed the SLs or NAAQS, BOEM could require additional analysis and modeling (regardless of the EET analysis).

3. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

4. Protection of Children From Environmental Health and Safety Risks (E.O. 13045)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks, requires that environmental and related rules separately evaluate the potential impact to children. The USEPA has determined, and BOEM agrees, that children are an at-risk group for health effects associated with exposures to certain air pollutants, including some pollutants released or formed from OCS operations. BOEM has evaluated this final rule according to the requirements of E.O. 13045 and determined that this final rule is not an economically significant rule and does not create an environmental risk to health or a risk to safety that may disproportionately affect children.

5. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

6. Consultation With Tribes and Alaska Native Claims Settlement Act Corporations (E.O. 13175 and Other Authorities)

DOI strives to strengthen its government-to-government relationship with federally recognized tribes through a commitment to consultation with tribes and recognition of their right to self-governance and tribal sovereignty. E.O. 13175 and DOI's tribal consultation policy, which implements the E.O., provide for procedures for consultation with tribes when taking an action with tribal implications. DOI has extended its consultation policy to Alaska Native Claims Settlement Act (ANCSA) Corporations. Furthermore, BOEM recently issued its own expanded Tribal Consultation Guidance on June 29, 2018 (*https://www.boem.gov/Tribal-Engagement/https://www.boem.gov/Tribal-Engagement/*), identifying various consultation authorities that BOEM will follow in consulting with tribes and ANCSA Corporations.

DOI recognizes and respects the distinct, unique, and individual cultural traditions and values of Alaska Native people and statutory relationship between ANCSA Corporations and the Federal Government. In developing this rule, BOEM determined, based on DOI's consultation policies and the criteria in E.O. 13175, that the rule will not cause a substantial, direct effect on any federally recognized Indian tribe or ANCSA Corporation. 81 FR at 19795. The proposed rule preamble discussed the reasons for this determination with relation to the overall goals of the rulemaking. This final rule is much narrower in scope than the proposed rule, and any effects that the proposed rule might have had on tribes or ANCSA Corporations are more limited in this final rule.

Despite this determination on the proposed rule, BOEM offered to hold consultations with tribes and ANCSA Corporations during the proposal comment period. To determine whether tribes or ANCSA Corporations wanted to consult, BOEM provided, or offered to provide, information to several federally recognized tribes in Alaska (Kotzebue IRA,[46] Inpuiat Community of the Arctic Slope, Native Village of Wainwright, Native Village of Point Hope, Native Village of Point Lay, Native Village of Kaktovik, Native Village of Nuiqsut, and Native Village of Barrow) and in the GOM. BOEM received several requests for consultation, and in July 2016, BOEM followed through with invitations for government-to-government consultations with the federally recognized tribes listed above and several ANCSA Corporations (Kuupik Corporation, Inc.; Kaktovik Inupiat Corporation; the Northwest Arctic Native Association (NANA, also known as the NANA Regional Corporation); Cully Corporation; Ukpeagvik Inupiat Corporation; Arctic Slope Regional Corporation; Kikiktagruk Inupiat Corporation; Tikigaq Corporation; and Olgoonik Corporation). BOEM also invited the following tribes in the GOM to consult: The Poarch Band of Creek Indians of Alabama, the Mississippi Band of Choctaw Indians, the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, the Tunica-Biloxi Indian Tribe of Louisiana, the Alabama-Coushatta Tribes of Texas, the Kickapoo Traditional Tribe of Texas, and the Ysleta Del Sur Pueblo of Texas. No federally recognized tribes in Alaska or the GOM accepted the invitation.

One ANCSA Corporation, the Arctic Slope Regional Corporation (ASRC), accepted the invitation and engaged in consultation with BOEM. Their concerns related primarily to the amount of new information that could be required of lessees and operators in connection with the new rule, the increased complexity of the rulemaking, and the timing of the rulemaking relative to the ongoing Alaska regional air quality study. BOEM has taken all of the concerns raised by ASRC into consideration and has removed a number of rule provisions, in part in response to some of the comments made by the ASRC and other tribal organizations.

7. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action as defined in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

8. Improving Regulation and Regulatory Review (E.O. 13563)

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

9. Enhancing Coordination of National Efforts in the Arctic (E.O. 13689)

E.O. 13689 recognizes the Arctic has critical long-term strategic, ecological, cultural, and economic value, and it is imperative we continue to protect our national interests in the region, which include national defense; sovereign rights and responsibilities; maritime safety; energy and economic benefits; environmental stewardship; promotion of science and research; and preservation of the rights, freedoms, and

[46] The Tribe, a sovereign entity, is commonly called the Kotzebue IRA due to its organization pursuant to the 1934 Indian Reorganization Act as amended for Alaska in 1936.

uses of the sea as reflected in international law.

E.O. 13689 also recognizes it is vital that Federal agencies work together to enhance coordination on Arctic efforts. Pursuant to this goal, the E.O. establishes an Arctic Executive Steering Committee (Steering Committee), to provide ''guidance to executive departments and agencies (agencies) and enhance coordination of Federal Arctic policies across agencies and offices, and, where applicable, with State, local, and Alaska Native Tribal governments and similar Alaska Native organizations, academic and research institutions, and the private and nonprofit sectors.'' DOI is a member of this Steering Committee.

Consistent with DOI's long-standing commitment to coordinate with other Federal agencies on Arctic matters, BOEM worked with the Steering Committee and other relevant agencies in developing this rule. Within DOI, these agencies included the BSEE, the U.S. Fish and Wildlife Service, the National Park Service, and the Bureau of Land Management. In addition, BOEM consulted extensively with the USEPA and the U.S. Forest Service within the Department of Agriculture.

The E.O. also recognizes ''it is in the best interest of the Nation for the Federal Government to maximize transparency and promote collaboration where possible with the State of Alaska, Alaska Native Tribal governments and similar Alaska Native organizations, and local, private-sector, and nonprofit-sector stakeholders.'' BOEM has complied with this order, as described further in the section K, which is entitled, ''Consultation with Tribes and Alaska Native Claims Settlement Act Corporations (E.O. 13175) and Other Authorities,'' above.

10. Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

E.O. 13771 (January 30, 2017) directs federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13795 directs the DOI to reconsider its proposed rule on air quality compliance. The proposed rule would have changed BOEM's air quality regulatory program (AQRP) to align BOEM's regulatory scheme with various aspects of USEPA's regulations under the CAA. That alignment would have resulted in an AQRP that imposed a significant increase in the regulatory burden on industry. In contrast, this final rule is limited in scope to those provisions mandated by OCSLA and which do not impose additional cost burdens on industry. As a result, there are no incremental compliance costs in this rulemaking and the concerns associated with the high cost of the proposed air quality rule are no longer relevant. This final rule streamlines information collection and provides compliance clarity to the regulated entities. Therefore, BOEM considers this final rule to be deregulatory.

11. Promoting Energy Independence and Economic Growth (E.O. 13783)

E.O. 13783 section 2 requires agencies to ''review all existing regulations, orders, guidance documents, policies, and any other similar agency actions'' with the goal of eliminating provisions that impede domestic energy production. Section 2(a) exempts agency actions ''that are mandated by law, necessary for the public interest, and consistent with the policy [to remove unnecessary regulatory burdens on domestic energy production while promoting clean air and water within the constraints of current statutes].'' BOEM determined in coordination with DOI and OMB that the E.O. 13783 principles should be applied to the proposed rule. Consequently, BOEM is publishing this final rule consistent with OCSLA's statutory mandate to ensure OCS domestic energy activities authorized under OCSLA comply with the NAAQS under the CAA. The final rule promotes the public interest and clean air, while also eliminating many of the proposed rule's unnecessary and premature provisions that may not have withstood judicial review. This is done in an effort to reduce compliance costs on industry and to narrowly tailor the regulatory system to BOEM's specific statutory jurisdiction, pending evaluation of the results of air quality studies.

12. Implementing an America-First Offshore Energy Strategy (E.O. 13795)

E.O. 13795 section 2 states that U.S. policy is ''to encourage energy exploration and production, including on the [OCS], in order to maintain the Nation's position as a global energy leader and foster energy security and resilience . . . while ensuring that any such activity is safe and environmentally responsible.'' Section 8 specifically directs the Secretary to review the proposed rule and ''consistent with law, consider whether [it] . . . should be revised or withdrawn.'' Consequently, BOEM reviewed the proposed rule through the section 2 policy lens and eliminated or revised many of the provisions in this final rule by striking a balance between OCS energy development and clean air responsibilities consistent with this Administration's policy. This final rule reflects the Secretary's clean air responsibilities mandated under 43 U.S.C. 1334(a)(8). It also, as discussed elsewhere in this preamble, avoids adding requirements that could have been unduly burdensome, that would be premature in light of the evaluation of recent studies, and that were based on an attempt to align with requirements under the CAA in spite of the differences between that statute and section 1334(a)(8).

List of Subjects in 30 CFR Part 550

Administrative practice and procedure, Air pollutant, Air pollution, Air quality, Arctic, Attainment area, Continental shelf, Compliance, Criteria air pollutants, Development plan, Development and production plan, Environmental protection, Exploration plan, Federal lands, Federal land manager, New source review, Non-attainment area, Oil, gas, and sulfur exploration, Oil, gas, and sulfur development, Oil pollution, Oil production, Outer Continental Shelf, Ozone, Penalties, Pipelines, Precursor pollutants, Prevention of significant deterioration, Reporting and recordkeeping requirements, Sulfur.

Casey Hammond,

Principal Deputy Assistant Secretary, Exercising the Authority of the Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, BOEM amends 30 CFR part 550 as follows:

PART 550—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 550 continues to read as follows:

Authority: 30 U.S.C. 1751; 31 U.S.C. 9701; 43 U.S.C. 1334.

■ 2. In § 550.105:

■ a. Remove the definition of ''Air pollutant'';

■ b. Revise the definition of ''Attainment area'';

■ c. In the definition of ''Best available control technology'', remove ''air pollutant'' everywhere it appears and add in its place ''criteria air pollutant and VOC'';

■ d. Add a definition for ''Criteria air pollutant'' in alphabetical order;

■ e. Revise the definitions of ''Emission offsets'', ''Existing facility'', and ''Nonattainment area''; and

■ f. Add a definition for ''Volatile organic compound'' in alphabetical order.

The revisions and additions read as follows:

§ 550.105 Definitions.

* * * * *

Attainment area means, for any criteria air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of the Environmental Protection Agency (EPA) to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

* * * * *

Criteria air pollutant means any air pollutant for which the EPA has established a primary or secondary national ambient air quality standard pursuant to section 109 of the Clean Air Act.

* * * * *

Emission offsets mean emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan (EP), Development and Production Plan (DPP), or Development Operations Coordination Document (DOCD).

* * * * *

Existing facility, as used in § 550.303, means an Outer Continental Shelf (OCS) facility described in an Exploration Plan, a Development and Production Plan, or a Development Operations Coordination Document, approved before June 2, 1980.

* * * * *

Nonattainment area means, for any criteria air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary ambient air quality standard established by EPA.

* * * * *

Volatile organic compound (VOC) means any organic compound that is emitted to the atmosphere as a vapor. Unreactive compounds are excluded from the preceding sentence of this definition.

* * * * *

■ 3. In § 550.218, revise paragraphs (a) introductory text and (e) to read as follows:

§ 550.218 What air emissions information must accompany the EP?

* * * * *

(a) *Projected emissions.* Tables showing the projected emissions of criteria air pollutants, volatile organic compounds (VOC), and total suspended particulates (TSP) generated by your proposed exploration activities.

* * * * *

(e) *Non-exempt drilling units.* A description of how you will comply with § 550.303 when the projected emissions reported under paragraph (a) of this section are greater than the respective emission exemption thresholds (EET) calculated using the formulas in § 550.303(d). When BOEM requires air quality dispersion modeling, you must use the guidelines in appendix W of 40 CFR part 51 for dispersion modeling with a model approved by the Director. You must also submit the best available meteorological information and data consistent with the model(s) used.

* * * * *

■ 4. In § 550.249:

■ a. Revise paragraph (a) introductory text;

■ b. In paragraph (a)(2), remove ''air pollutant'' and add in its place ''criteria air pollutant, VOC, or TSP''; and

■ c. Revise paragraph (e).

The revisions read as follows:

§ 550.249 What air emissions information must accompany the DPP or DOCD?

* * * * *

(a) *Projected emissions.* Tables showing the projected emissions of criteria air pollutants, volatile organic compounds (VOC), and total suspended particulates (TSP) generated by your proposed development and production activities.

* * * * *

(e) *Non-exempt facilities.* A description of how you will comply with § 550.303 when the projected emissions reported under paragraph (a) of this section are greater than the respective emission exemption thresholds (EET) calculated using the formulas in § 550.303(d). When BOEM requires air quality dispersion modeling, you must use the guidelines in appendix W of 40 CFR part 51 for dispersion modeling with a model approved by the Director. You must also submit the best available meteorological information and data consistent with the model(s) used.

* * * * *

§ 550.283 [Amended]

■ 5. In § 550.283(a)(4), remove ''air pollutant'' and add in its place ''criteria air pollutant, VOC, or TSP''.

■ 6. In § 550.302:

■ a. Remove the definition of ''Air pollutant'';

■ b. Revise the definition of ''Attainment area'';

■ c. In the definition of ''Best available control technology'', remove ''air pollutant'' everywhere it appears and add in its place ''criteria air pollutant and VOC'';

■ d. Add the definitions for ''Criteria air pollutant'' and ''Emission exemption threshold'' in alphabetical order;

■ e. Revise the definitions of ''Emission offsets'' and ''Existing facility'';

■ f. Add the definition for ''National Ambient Air Quality Standard'' in alphabetical order; and

■ g. Revise the definitions of ''Nonattainment area'' and ''Volatile organic compound''.

The revisions and additions read as follows:

§ 550.302 Definitions concerning air quality.

* * * * *

Attainment area means, for any criteria air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) not to exceed any primary or secondary ambient air quality standards established by EPA.

* * * * *

Criteria air pollutant means any air pollutant for which the EPA has established a primary or secondary national ambient air quality standard pursuant to section 109 of the Clean Air Act.

Emission exemption threshold (EET) means the rate of projected emissions, calculated for a criteria air pollutant or VOC or TSP, above which a facility would be subject to the requirements of § 550.303(e) through (i) or § 550.304(b) through (e).

Emission offsets mean emission reductions obtained from facilities, either onshore or offshore, other than the facility or facilities covered by the proposed Exploration Plan (EP), Development and Production Plan (DPP), or Development Operations Coordination Document (DOCD).

Existing facility, as used in § 550.303, means an OCS facility described in an Exploration Plan, a Development and Production Plan, or a Development Operations Coordination Document approved before June 2, 1980.

* * * * *

National Ambient Air Quality Standard (NAAQS) means a national air quality standard for any given criteria air pollutant, established pursuant to section 109 of the Clean Air Act.

Nonattainment area means, for any criteria air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator of EPA to be reliable) to exceed any primary or secondary

ambient air quality standard established by EPA.

* * * * *

Volatile organic compound (VOC) means any organic compound that is emitted to the atmosphere as a vapor. Unreactive compounds are excluded from the preceding sentence of this definition.

■ 7. In § 550.303:

■ a. Revise the section heading;

■ b. In paragraphs (a) and (c), remove ''Exploration Plans and Development and Production Plans'' and add in its place ''Exploration Plans, Development and Production Plans, and Development Operations Coordination Documents'';

■ c. In paragraphs (b)(1) and (j), remove ''Exploration Plan or Development and Production Plan'' and add in its place ''Exploration Plan, Development and Production Plan, or Development Operations Coordination Document'';

■ d. Revise paragraphs (d), (e), and (f);

■ e. In paragraphs (g)(1) and (2) introductory text, remove ''air pollutant other than VOC'' add in its place ''criteria air pollutant'';

■ f. In paragraph (g)(2)(i)(B), remove ''air pollutant'' everywhere it appears and add in its place ''criteria air pollutant''; and

■ g. Revise paragraph (h) and the heading of paragraph (j).

The revisions read as follows:

§ 550.303 Facilities described in a new or revised Exploration Plan, Development and Production Plan, or Development Operations Coordination Document.

* * * * *

(d) *Exemption formulas.* To determine whether a facility described in an initial, modified, supplemental, or revised Exploration Plan, Development and Production Plan, or Development Operations Coordination Document is exempt from further air quality review, the lessee must use the highest annual-total amount of emissions from the facility calculated for each criteria air pollutant, VOC, and TSP listed in § 550.249(a) or § 550.218(a) and compare these emissions to the emission exemption threshold (EET) calculated using the following formulas: EET = 3400*$D^{2/3}$ for carbon monoxide (CO); and EET = 33.3*D for total suspended particulates (TSP), sulfur dioxide (SO_2), nitrogen oxides (NO_X), utilizing NO_2 as the indicator pollutant for NO_X, and VOC (where EET is the emission exemption threshold expressed in short tons per year, and D is the distance of the proposed facility from the closest onshore area of a State expressed in statute miles). If the amount of these projected emissions is less than or equal to the emission exemption threshold (EET) for the corresponding criteria air pollutant, VOC, and TSP, the facility is exempt from further air quality review required under paragraphs (e) through (i) of this section.

(e) *Significance levels (SLs).* (1) For a facility not exempt under paragraph (d) of this section, the lessee must use a BOEM approved air quality model to determine whether projected emissions from the facility result in an onshore ambient air concentration above any SL set forth in the following table:

TABLE 1 TO PARAGRAPH (e)(1)—SIGNIFICANCE LEVELS (SLS)

	Averaging time				
	1 hour (mg/m³)	3 hour (μg/m³)	8 hour (mg/m³)	24 hour (μg/m³)	Annual (μg/m³)
Criteria Air Pollutant:					
Sulfur Dioxide		25.0		5.0	1.0
PM_{10}				5.0	1.0
$PM_{2.5}$				1.2	0.3
Nitrogen Dioxide [1]					1.0
Carbon Monoxide	2.0		0.5		

[1] NO_2 is the indicator pollutant for NO_X.

(2) In the event that the emissions of TSP exceed the EET for TSP, the lessee must use a BOEM approved air quality model to determine whether the projected emissions from the facility result in an onshore ambient air concentration above the SL for either PM_{10} or $PM_{2.5}$.

(f) *Significance determinations.* (1) The projected emissions of any criteria air pollutant from any facility that result in an onshore ambient air concentration above a SL determined under paragraph (e) of this section for that criteria air pollutant will be deemed to significantly affect the air quality of the onshore area for that criteria air pollutant.

(2) The projected emissions of VOC from any facility which is not exempt under paragraph (d) of this section will be deemed to significantly affect the air quality of the onshore area for VOC.

* * * * *

(h) *Controls required on temporary facilities.* The lessee must apply BACT to reduce projected emissions of any criteria air pollutant or VOC from a temporary facility that significantly affect the air quality of an onshore area of a State.

* * * * *

(j) *Review of facilities with emissions below the emission exemption thresholds.* * * *

* * * * *

■ 8. In § 550.304, revise paragraphs (b), (c), (d), and (e)(1) and the heading of paragraph (f) to read as follows:

§ 550.304 Existing facilities.

* * * * *

(b) *Exemption formulas.* To determine whether an existing facility is exempt from further air quality review, the lessee must use the highest annual-total amount of emissions from the facility calculated for each criteria air pollutant, VOC, and TSP listed in § 550.249(a) or § 550.218(a) and compare these emissions to the emission exemption threshold (EET) calculated using the following formulas: EET = 3400*$D^{2/3}$ for carbon monoxide (CO); and EET = 33.3*D for total suspended particulates (TSP), sulfur dioxide (SO_2), nitrogen oxides (NO_X), utilizing NO_2 as the indicator pollutant for NO_X and VOC (where EET is the emission exemption threshold expressed in short tons per year, and D is the distance of the proposed facility from the closest onshore area of a State expressed in statute miles). If the amount of these projected emissions is less than or equal to the emission exemption threshold (EET) for the corresponding criteria air pollutant, VOC, and TSP, the facility is exempt from further air quality review required under paragraphs (c) through (e) of this section.

(c) *Significance levels.* For a facility not exempt under paragraph (b) of this section, the lessee must use a BOEM

approved air quality model to determine whether the projected emissions from the facility result in an onshore ambient air concentration above any SL set forth in § 550.303(e). In the event that the emissions of TSP exceed the EET for TSP, the lessee must use a BOEM approved air quality model to determine whether the projected emissions from the facility result in an onshore ambient air concentration above the SL for either PM_{10} or $PM_{2.5}$.

(d) *Significance determinations.* (1) The projected emissions of any criteria air pollutant from any facility that result in an onshore ambient air concentration above an SL determined under paragraph (c) of this section for that criteria air pollutant, will be deemed to significantly affect the air quality of the onshore area for that criteria air pollutant.

(2) The projected emissions of VOC from any facility, which is not exempt under paragraph (b) of this section, will be deemed to significantly affect the air quality of the onshore area for VOC.

(e) * * *

(1) The projected emissions of any criteria air pollutant or VOC that significantly affect the air quality of an onshore area must be reduced through the application of BACT.

* * * * *

(f) *Review of facilities with emissions below the emission exemption thresholds.* * * *

* * * * *

[FR Doc. 2020–11573 Filed 6–4–20; 8:45 am]

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Part VI

The President

Proclamation 10044—African-American Music Appreciation Month, 2020
Proclamation 10045—Great Outdoors Month, 2020
Proclamation 10046—National Caribbean-American Heritage Month, 2020
Proclamation 10047—National Homeownership Month, 2020
Proclamation 10048—National Ocean Month, 2020
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Presidential Documents

Title 3—

The President

Proclamation 10044 of May 29, 2020

African-American Music Appreciation Month, 2020

By the President of the United States of America

A Proclamation

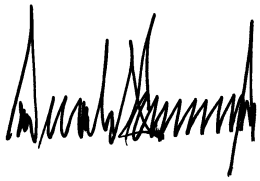
The lyrics and melodies of African-American music have played a powerful role in defining America's unique soundscape. From the soulful streets of the Big Easy to the recording studios of Los Angeles, African-American music has shaped our American culture. During African-American Music Appreciation Month, we pay tribute to the monumental achievements of African-American artists who pioneered and evolved the blues, jazz, gospel, rock and roll, rap, hip-hop, and other iconic genres.

Throughout our Nation's history, African-American music has expressed the pain and suffering brought on by injustice as well as the faith and joy of the resilient American spirit. Sam Cooke's triumphant ''A Change Is Gonna Come'' gave wind to the sails of millions of African Americans in their righteous fight for equality during the Civil Rights Movement. The divine voice of Mahalia Jackson, the ''Queen of Gospel,'' helped heal our grieving Nation in the days following the assassination of Martin Luther King, Jr. At major sporting events, African-American musical icons, such as Whitney Houston and Ray Charles, have captivated America with striking renditions of patriotic ballads such as the National Anthem and ''America the Beautiful.'' This month, we lost the Architect of Rock and Roll, Richard Wayne Penniman—better known and beloved as Little Richard—who is responsible for breaking down racial barriers through the universal love of his music. He was an unforgettable entertainer, an innovator, and an American icon. Our Nation mourns his passing.

This month, we express our appreciation for the countless contributions of African-American singers, songwriters, and musicians, whose remarkable talents continue to inspire the soul of our Nation. With classic guitar riffs, memorable hymns, and uplifting beats, the works of African-American artists undeniably represent true musical excellence.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2020 as African-American Music Appreciation Month. I call upon public officials, educators, and all the people of the United States to observe this month with appropriate activities and programs that raise awareness and appreciation of African-American music.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



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Presidential Documents

Proclamation 10045 of May 29, 2020

Great Outdoors Month, 2020

By the President of the United States of America

A Proclamation

Our Nation is blessed with abundant natural beauty that can be enjoyed every season from coast to coast. During Great Outdoors Month, we celebrate the majestic mountains, forests, canyons, beaches, and rivers that provide recreation and renewal for all Americans, enriching our lives and strengthening an enduring connection to our national heritage.

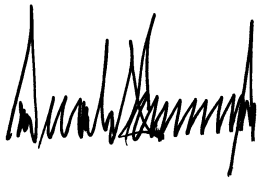
Our parks, recreational areas, and public lands are some of our greatest national treasures. For centuries, Americans have looked to the sprawling expanse of America's outdoor spaces as a source of adventure, sustenance, and inspiration. From the lands and waters that constitute our National Park System, to State, local, and city parks, to our own backyards, every unique experience of the great outdoors helps improve our health and offers opportunities for families, friends, and communities to connect over a shared appreciation for the natural world.

My Administration remains committed to restoring and preserving our land, air, and waters while also opening up more recreational opportunities for all Americans. We have provided increased access to public lands, expanding hunting and fishing opportunities at national wildlife refuges and national fish hatcheries across 1.7 million acres. Last year, I was proud to sign the largest public lands legislation in a decade, designating 1.3 million new acres of wilderness and increasing recreational access for hunters, fishers, boaters, and campers. Additionally, I announced that the United States will be joining the One Trillion Trees Initiative, an ambitious effort to bring together government and private sector partners and further our commitment to maintaining our natural world. Through these actions, we are actively promoting a conservation ethic that drives responsible stewardship of our environment.

Whether hiking on world-class trails, camping under the stars, or fishing our Nation's abundant waterways, exploring the great outdoors provides adventurers of all ages endless opportunities to create lifelong memories. This month, we pause to appreciate the extraordinary natural beauty of our country, and we recommit to protecting and preserving our natural wonders for future generations.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2020 as Great Outdoors Month. I urge all Americans to explore the great outdoors while acting as stewards of our lands and waters.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–12416
Filed 6–4–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10046 of May 29, 2020

National Caribbean-American Heritage Month, 2020

By the President of the United States of America

A Proclamation

From America's earliest days, Caribbean Americans have contributed to the success, spirit, and character of our Nation. For generations, their skills, knowledge, innovation, and initiative have enhanced and advanced many aspects of our society. During National Caribbean-American Heritage Month, we celebrate the rich history and vibrant culture of the more than 4 million Americans with origins in the Caribbean.

Caribbean Americans have helped improve our Nation by leading communities, advancing science and medicine, and advocating for the common good. We are especially grateful for the Caribbean-American men and women who proudly wear our Nation's uniform as members of the Armed Forces and those serving as first responders, medical professionals, and other essential personnel on the front lines in the fight against the coronavirus. Our Nation is safer, stronger, and healthier because of their service and sacrifices.

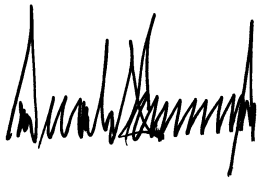
Caribbean Americans have also left indelible marks on American culture. Roberto Clemente, a native of Puerto Rico and legendary baseball player, is one of many shining examples. He not only had a stunning Hall of Fame baseball career, but he also dutifully served our Nation as a member of the United States Marine Corps Reserve for 6 years and served others throughout his life with profound care and compassion. Like so many other Caribbean Americans, he continues to inspire us today and remind us of the strong connection the United States will always have with the Caribbean region.

The United States is also the primary trading partner for the Caribbean nations that make up our Nation's ''third border.'' My Administration is dedicated to maintaining and strengthening our partnerships within the Caribbean regions, which are forged through bonds of friendship, diplomacy, and a shared commitment to democratic principles. We will continue strategic engagement in the areas of human rights, maritime security, crime prevention and interdiction, education, health, energy, economic growth, and disaster recovery and relief. Stability in the Caribbean—achieved through increased trade, job creation and investment, and efforts to counter organized crime and illicit trafficking—ensures a more secure, prosperous United States.

This month, we pay tribute to Caribbean Americans for all they have done to drive our country forward.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2020 as National Caribbean-American Heritage Month. I encourage all Americans to join in celebrating the history, culture, and achievements of Caribbean Americans with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–12418
Filed 6–4–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10047 of May 29, 2020

National Homeownership Month, 2020

By the President of the United States of America

A Proclamation

For generations, homeownership has sustained and empowered Americans. Recently, we have been reminded that our homes are central to our health, our independence, and the well-being of our families. In response to the coronavirus outbreak, millions of Americans have transformed their homes into safe havens, virtual workplaces, classrooms, and, most importantly, places to nurture hopes and dreams for the future. During National Homeownership Month, we acknowledge the many benefits of secure and affordable homeownership.

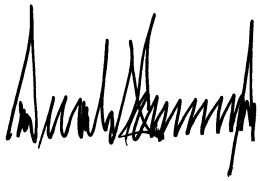
Thanks to my Administration's swift and decisive action to assist millions of homeowners affected by the coronavirus, we have protected the wealth that hardworking Americans have built up through homeownership. To help ensure that homeowners do not lose their homes unnecessarily due to this crisis, I signed into law the unprecedented Coronavirus Aid, Relief, and Economic Security (CARES) Act. This legislation provided direct cash payments to Americans and authorized mortgage-payment relief for eligible homeowners with federally backed mortgages struggling to make their payments.

As our Nation's economy begins to recover, my Administration remains focused on getting government out of the way of responsible homeownership and reforming our housing finance system. We have supported affordable homeownership by eliminating outdated and unnecessary regulations, and we are strengthening investment in underserved communities through the designation of Opportunity Zones. Through the work of the White House Council on Eliminating Regulatory Barriers to Affordable Housing, we are continuing to collaborate with States and local jurisdictions to ease the burden of regulations that needlessly hinder opportunities for Americans to become homeowners. Additionally, last year, the Department of the Treasury and the Department of Housing and Urban Development released plans to define the limited role of the Federal Government in the housing finance system, enhance taxpayer protections against future bailouts, and promote competition in the housing finance system.

This month, we renew our commitment to helping pave the way for more Americans to achieve the financial benefits and stability of homeownership. Building on the roaring success we were experiencing prior to the coronavirus pandemic, our economy will rebound and create the jobs that Americans need to achieve the American dream of owning a home.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2020 as National Homeownership Month.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–12421
Filed 6–4–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Proclamation 10048 of May 29, 2020

National Ocean Month, 2020

By the President of the United States of America

A Proclamation

Our ocean and coastal waterways are essential to our national security, international trade, maritime commerce, global competitiveness, and transportation. The jobs of more than 3 million Americans depend on our ocean economy, which generates more than $300 billion of economic activity annually. During National Ocean Month, we reaffirm our commitment to responsible stewardship of our ocean resources to strengthen and expand economic opportunities, while also ensuring that the natural beauty and wonder of the oceans are preserved and maintained for future generations.

There is much that remains undiscovered in the world's vast oceans, and my Administration is working to improve our understanding of its incredible resources. Today, roughly 18.6 percent of our Nation's oil and gas production is conducted offshore, employing thousands of Americans and helping keep prices low for American families and businesses. There is enormous opportunity for our country to bolster these numbers and expand this critical and profitable industry, generating even more jobs for hardworking Americans. Only 40 percent of the United States Exclusive Economic Zone (EEZ), an oceanic area larger than the combined land area of the 50 States, has been mapped. Even less of the EEZ's natural resources have been characterized through exploration. For this reason, last year, I signed a historic Presidential Memorandum that prioritizes mapping, exploring, and characterizing our ocean waters. Building upon these efforts, last month I signed an Executive Order Promoting American Seafood Competitiveness and Economic Growth. This Executive Order will increase America's competitiveness in the seafood industry and create new opportunities for American products in the global marketplace, including through continued support of our commercial fisheries and promotion of domestic aquaculture. My Administration is committed to expanding maritime commerce, increasing seafood production, promoting conservation, enhancing national security, and advancing energy exploration, development, and production by expanding efforts to study, understand, and unlock the full potential of our oceans.

As we continue to unlock the economic opportunities in these flourishing bodies of water, my Administration is also diligently working to put an end to one of the biggest challenges facing the global environment: increased pollution in the oceans. Recognizing that 80 percent of marine litter comes from land-based resources resulting from insufficient solid waste management, we have been working hard, with our domestic and international partners, to improve waste management systems around the world and deploy innovative technologies to put an end to the mass amounts of litter washing into our shared waters. In addition, I signed the Save Our Seas Act of 2018 into law, which prioritizes cleanup activities and addresses international sources of pollution.

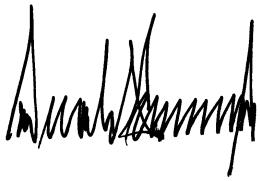
The task of balancing the uses of America's oceans cannot be accomplished by the Federal Government alone. The 2019 White House Summit on Partnerships in Ocean Science and Technology highlighted that our continued

use, conservation, observation, and exploration of the ocean requires innovative engagement and collaboration with key partners, including private industries, States, territories, academia, philanthropic groups, Native American and Tribal organizations, and other stakeholders. By working together and harnessing our collective power, knowledge, and experience, we can better promote resource stewardship, create and maintain jobs for American workers, and ensure our Nation's prosperity while conserving the marine environment.

Many of the most pressing challenges facing mankind may have solutions in the oceans. My Administration is committed to advancing technology and innovation to better understand how our oceans may help us address current and future challenges facing our Nation. Establishing energy infrastructure, discovering and developing novel marine-derived pharmaceuticals, improving weather predictions, and advancing offshore aquaculture operations are just some examples of innovative initiatives supported by my Administration. These bold efforts have the potential to promote economic prosperity, create jobs, and strengthen our maritime and homeland security for current and future generations of Americans.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2020 as National Ocean Month. This month, I call upon Americans to reflect on the value and importance of oceans not only to our security, environment, and economy but also as a source of recreation and enjoyment.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of May, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–12428
Filed 6–4–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Executive Order 13926 of June 2, 2020

Advancing International Religious Freedom

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* (a) Religious freedom, America's first freedom, is a moral and national security imperative. Religious freedom for all people worldwide is a foreign policy priority of the United States, and the United States will respect and vigorously promote this freedom. As stated in the 2017 National Security Strategy, our Founders understood religious freedom not as a creation of the state, but as a gift of God to every person and a right that is fundamental for the flourishing of our society.

(b) Religious communities and organizations, and other institutions of civil society, are vital partners in United States Government efforts to advance religious freedom around the world. It is the policy of the United States to engage robustly and continually with civil society organizations—including those in foreign countries—to inform United States Government policies, programs, and activities related to international religious freedom.

Sec. 2. *Prioritization of International Religious Freedom.* Within 180 days of the date of this order, the Secretary of State (Secretary) shall, in consultation with the Administrator of the United States Agency for International Development (USAID), develop a plan to prioritize international religious freedom in the planning and implementation of United States foreign policy and in the foreign assistance programs of the Department of State and USAID.

Sec. 3. *Foreign Assistance Funding for International Religious Freedom.* (a) The Secretary shall, in consultation with the Administrator of USAID, budget at least $50 million per fiscal year for programs that advance international religious freedom, to the extent feasible and permitted by law and subject to the availability of appropriations. Such programs shall include those intended to anticipate, prevent, and respond to attacks against individuals and groups on the basis of their religion, including programs designed to help ensure that such groups can persevere as distinct communities; to promote accountability for the perpetrators of such attacks; to ensure equal rights and legal protections for individuals and groups regardless of belief; to improve the safety and security of houses of worship and public spaces for all faiths; and to protect and preserve the cultural heritages of religious communities.

(b) Executive departments and agencies (agencies) that fund foreign assistance programs shall ensure that faith-based and religious entities, including eligible entities in foreign countries, are not discriminated against on the basis of religious identity or religious belief when competing for Federal funding, to the extent permitted by law.

Sec. 4. *Integrating International Religious Freedom into United States Diplomacy.* (a) The Secretary shall direct Chiefs of Mission in countries of particular concern, countries on the Special Watch List, countries in which there are entities of particular concern, and any other countries that have engaged in or tolerated violations of religious freedom as noted in the Annual Report on International Religious Freedom required by section 102(b) of the International Religious Freedom Act of 1998 (Public Law 105–292), as amended (the ''Act''), to develop comprehensive action plans to inform and support the efforts of the United States to advance international religious

freedom and to encourage the host governments to make progress in eliminating violations of religious freedom.

(b) In meetings with their counterparts in foreign governments, the heads of agencies shall, when appropriate and in coordination with the Secretary, raise concerns about international religious freedom and cases that involve individuals imprisoned because of their religion.

(c) The Secretary shall advocate for United States international religious freedom policy in both bilateral and multilateral fora, when appropriate, and shall direct the Administrator of USAID to do the same.

Sec. 5. *Training for Federal Officials.* (a) The Secretary shall require all Department of State civil service employees in the Foreign Affairs Series to undertake training modeled on the international religious freedom training described in section 708(a) of the Foreign Service Act of 1980 (Public Law 96–465), as amended by section 103(a)(1) of the Frank R. Wolf International Religious Freedom Act (Public Law 114–281).

(b) Within 90 days of the date of this order, the heads of all agencies that assign personnel to positions overseas shall submit plans to the President, through the Assistant to the President for National Security Affairs, detailing how their agencies will incorporate the type of training described in subsection (a) of this section into the training required before the start of overseas assignments for all personnel who are to be stationed abroad, or who will deploy and remain abroad, in one location for 30 days or more.

(c) All Federal employees subject to these requirements shall be required to complete international religious freedom training not less frequently than once every 3 years.

Sec. 6. *Economic Tools.* (a) The Secretary and the Secretary of the Treasury shall, in consultation with the Assistant to the President for National Security Affairs, and through the process described in National Security Presidential Memorandum–4 of April 4, 2017 (Organization of the National Security Council, the Homeland Security Council, and Subcommittees), develop recommendations to prioritize the appropriate use of economic tools to advance international religious freedom in countries of particular concern, countries on the Special Watch List, countries in which there are entities of particular concern, and any other countries that have engaged in or tolerated violations of religious freedom as noted in the report required by section 102(b) of the Act. These economic tools may include, as appropriate and to the extent permitted by law, increasing religious freedom programming, realigning foreign assistance to better reflect country circumstances, or restricting the issuance of visas under section 604(a) of the Act.

(b) The Secretary of the Treasury, in consultation with the Secretary of State, may consider imposing sanctions under Executive Order 13818 of December 20, 2017 (Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption), which, among other things, implements the Global Magnitsky Human Rights Accountability Act (Public Law 114–328).

Sec. 7. *Definitions.* For purposes of this order:

(a) ''Country of particular concern'' is defined as provided in section 402(b)(1)(A) of the Act;

(b) ''Entity of particular concern'' is defined as provided in section 301 of the Frank R. Wolf International Religious Freedom Act (Public Law 114–281);

(c) ''Special Watch List'' is defined as provided in sections 3(15) and 402(b)(1)(A)(iii) of the Act; and

(d) ''Violations of religious freedom'' is defined as provided in section 3(16) of the Act.

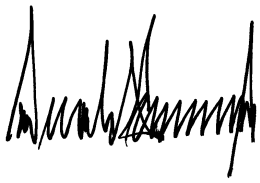
Sec. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
June 2, 2020.

[FR Doc. 2020–12430
Filed 6–4–20; 11:15 am]
Billing code 3295–F0–P

Presidential Documents

Memorandum of June 2, 2020

Providing Continued Federal Support for Governors' Use of the National Guard To Respond to COVID–19 and To Facilitate Economic Recovery

Memorandum for the Secretary of Defense [and] the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the ''Stafford Act''), and section 502 of title 32, United States Code, it is hereby ordered as follows:

Section 1. *Policy.* It continues to be the policy of the United States to foster close cooperation and mutual assistance between the Federal Government and the States and territories in the battle against the threat posed by the spread of COVID–19, especially as the United States transitions to a period of increased economic activity and recovery in those areas of the Nation where the threat posed by COVID–19 has been sufficiently mitigated. To date, activated National Guard forces around the country have provided critical support to Governors as the Governors work to address the needs of those populations within their respective States and territories especially vulnerable to the effects of COVID–19, including those in nursing homes, assisted living facilities, and other long-term care or congregate settings. This need to focus efforts to protect especially vulnerable populations from the threat posed by COVID–19 will persist. Therefore, to continue to provide maximum support to the States and territories as they make decisions about the responses required to address local conditions in their respective jurisdictions with respect to combatting the threat posed by COVID–19 and, where appropriate, facilitating their economic recovery, I am taking the actions set forth in section 2 of this memorandum:

Sec. 2. *Termination and Extension.* The 100 percent Federal cost share for the States' and territories' use of National Guard forces authorized pursuant to my prior memoranda dated March 22, 28, and 30, 2020, and April 2, 7, and 13, 2020, each titled ''Providing Federal Support for Governors' Use of the National Guard to Respond to COVID–19,'' and my prior memoranda dated April 20 and 28, 2020, and May 8 and 20, 2020, each titled ''Providing Continued Federal Support for Governors' Use of the National Guard to Respond to COVID–19 and to Facilitate Economic Recovery,'' shall extend to, and shall be available for orders of any length authorizing duty through August 21, 2020. Such orders include duty necessary to comply with health protection protocols recommended by the Centers for Disease Control and Prevention of the Department of Health and Human Services or other health protection measures agreed to by the Department of Defense and the Federal Emergency Management Agency of the Department of Homeland Security.

Sec. 3. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

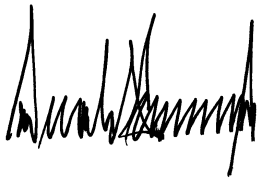
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, June 2, 2020

[FR Doc. 2020–12431
Filed 6–4–20; 11:15 am]
Billing code 3295–F0–P

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